

No. 10073

---

United States

Circuit Court of Appeals

For the Ninth Circuit.

Vol  
2339

WESTERN-KNAPP ENGINEERING CO., a  
corporation,

Appellant,

vs.

O. T. GILBANK, Trustee of the Estate of Jumbo  
Consolidated Mining Company, a corporation,  
Bankrupt,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the  
United States for the Southern District  
of California, Central Division.

FILED

APR - 2 1942



United States  
Circuit Court of Appeals

For the Ninth Circuit.

---

WESTERN-KNAPP ENGINEERING CO., a  
corporation,

Appellant,

vs.

O. T. GILBANK, Trustee of the Estate of Jumbo  
Consolidated Mining Company, a corporation,  
Bankrupt,

Appellee.

---

Transcript of Record

---

Upon Appeal from the District Court of the  
United States for the Southern District  
of California, Central Division.

Index	Page
Designation of Record on Appeal (Circuit Court of Appeals).....	123
Designation of Record on Appeal (District Court) .....	109
Designation of Record on Appeal, Supplemental .....	112
Designation of Record on Appeal, Order for Inclusion of Certain Documents in.....	115
Findings of Fact by Referee.....	47, 85
Judgment and Order of District Judge on Review .....	102
Notice of Appeal.....	105
Order and Decision of District Judge, Dec. 29, 1941 .....	102
Order for Inclusion of Certain Documents in Record on Appeal.....	115
Order of Adjudication of Debtor as Bankrupt	14
Order of Referee on Petition of Trustee, June 6, 1941 .....	47
Order of Referee extending time to file petition for review .....	66
Order of Reference to Referee.....	13
Order to Show Cause on Petition of Trustee, Nov. 28, 1940.....	31
Petition of Appellant for Review of Referee's Order .....	68

<b>Index</b>	<b>Page</b>
Petition of Debtor Under Chapter XI, Bankruptcy Act .....	1
Exhibit "A"—List of Creditors.....	9
Exhibit "B"—List of Executory Contracts .....	10
Resolution of Board of Directors.....	11
Petition of Trustee for Recovery of Assets.....	19
Exhibit 1—List of Mining Machinery and Equipment .....	28
Exhibit 2—List of Mining Machinery and Equipment .....	29
Exhibit 3—List of Mining Machinery and Equipment .....	30
Resolution of Board of Directors of Debtor Authorizing Suit .....	11
Statement of Points on Appeal.....	118
Stipulation Dated Feb. 19, 1940, Amending Trustee's Petition .....	45
Stipulation dated Nov. 13, 1940.....	16
Summary of Evidence.....	79
Testimony, see Summary of Evidence.....	79



## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

ARTHUR P. SHAPRO, Esq.,  
420 Russ Building,  
San Francisco, California.

For Appellee:

MESSRS. MITCHELL, JOHNSON &  
LUDWICK, JAMES H. MITCHELL, Esq.,  
333 Roosevelt Building,  
Los Angeles, California. [1\*]

---

In the District Court of the United States  
Southern District of California  
Central Division

In the Matter of JUMBO CONSOLIDATED  
MINING COMPANY, a corporation,  
Debtor.

### DEBTOR'S PETITION

To the Honorable, the Judges of the District Court  
of the United States, for the Southern District  
of California:

The petition of Jumbo Consolidated Mining Company, a corporation, respectfully represents, that it is organized and existing under and by virtue of the laws of the State of Nevada, and conducting

---

\*Page numbering appearing at foot of page of original certified Transcript of Record.

business in the County of Los Angeles, State of California, and is a corporation engaged in the business of mining, having valuable mining properties in the State of California, valued at several hundred thousand dollars.

### I.

Your Debtor has resided at and had its principal office at 225 Santa Monica Boulevard, Santa Monica, California within the above judicial district for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

### II.

No bankruptcy proceedings, initiated by a petition by or against your Debtor, is now pending.

### III.

Your Debtor is unable to pay its debts as they mature by reason of the fact that due to a conspiracy between various stockholders, employees, creditors and other persons with whom the corporation has done and is doing business, numerous actions have been instituted and attachments levied for the purpose of embarrassing, harassing and complicating the Debtor's business in order to wreck Debtor's business for the purpose of acquiring control of Debtor's stock and the management of Debtor's business. That said conspiracy was entered into [2] by one Howard H. Wikoff as the attorney, representative and agent of Edward D. Hub-



bard and Esther Hubbard, the father-in-law of the said Howard H. Wikoff, his Mother, Mary Wikoff, one Elizabeth Kiley, a bookkeeper in the employ of your Debtor, and one Frank S. Tyler, a Brother-in-law of W. J. Shaw, the President of Debtor corporation, in conjunction with other persons and corporations doing business with your Debtor. That at all the times the said Howard H. Wikoff was involved as aforesaid with the said persons, the said Wikoff was employed by your Debtor and had access to all the books and records of the Debtor and was paid moneys by the Debtor for the purpose of meeting the claims of all creditors as they fell due, which said moneys were sufficient, had same been properly applied, to have met all current obligations of the Debtor due its creditors of every kind and character, and that solely by reason of the failure of the said Howard H. Wikoff to properly apply said moneys on the claims of creditors and not by reason of any fault of the Debtor were the said claims of creditors against the Debtor permitted to be in default and thereby placed said creditors in a position to attach property and assets of the Debtor and embarrass the Debtor in the operation of its said business, and that by reason of said conspiracy and during the illness of the said W. J. Shaw, the said Howard H. Wikoff took possession of the office and books and records of the Debtor and consequently the affairs of the Debtor were not properly taken care of.

## IV.

Your debtor proposes the following arrangements with its creditors, to be accomplished from the earnings of Debtor's business:

1. Debtor will pay in full all of the costs of these proceedings, expenses of administration herein, and the fees of the attorneys for the Debtor as the same may be fixed, established and ordered paid herein.

2. That Debtor will meet all of its obligations to its secured creditors at the time and in the manner prescribed for the payment thereof by agreement with said secured creditors.

3. That Debtor will liquidate in full all of the claims of its unsecured creditors by applying to the payment thereof all of the net proceeds of the Debtor's business until said unsecured creditors are liquidated in full, the [3] term "net proceeds" being the proceeds of Debtor's business remaining after the payment of all necessary expenses of operation of the said business and the payments to secured creditors, and the payment of the expenses of these proceedings as set forth in subdivision 1 of this Paragraph IV.

## V.

That part of the assets of the Debtor are now under attachment and Debtor is handicapped in the operation of its business by virtue of said attachment. That W. J. Shaw, the President of the Debtor corporation, and the person in active man-

agement and control thereof, has been ill and incapacitated for the greater part of the last two months next preceding the filing of this petition, and by reason thereof and the fact that certain persons were conspiring to wreck the Debtor corporation, the books and records of the Debtor are not in proper shape and condition to enable the Debtor to file a true and correct schedule of its assets and liabilities at the present time. That the books of the Debtor corporation are now in the hands of a Certified Public Accountant for the purpose of audit and to bring the said records down to date so that a complete schedule of assets and liabilities can be prepared herein. That Debtor is advised by the Certified Public Accountant that approximately thirty days will be necessary to complete said records so that proper and correct schedules in bankruptcy can be prepared therefrom.

## VI.

That by reason of the fact that the Debtor's books are not presently in the proper order, due to the illness of W. J. Shaw, the President, and the fact of the said conspiracy to wreck the Debtor Corporation's business, the Debtor is not at the present time in a position to file a true and correct statement of its affairs as provided by the Bankruptcy Act, and additional time should be granted Debtor for this purpose.

## VII.

That annexed hereto, marked "Exhibit A" and made a part hereof is a list of Debtor's creditors to the best of Debtor's knowledge and belief at the present time. That by reason of the said conspiracy to wreck the business of Debtor and the condition of Debtor's books by reason thereof, and the illness of [4] W. J. Shaw, the President, it may be that from the said list of Debtor's creditors there have been omitted certain thereof, but said list will be completed correctly and fully by the time the schedules are filed herein.

## VIII.

That annexed hereto, marked "Exhibit B" and made a part hereof is a list of Debtor's executory contracts to the best of Debtor's present information and belief.

## IX.

That in the opinion of Debtor, the assets of Debtor's business are valued at several times over the amount of Debtor's debts; that the present earnings of the Debtor are sufficient to liquidate the debts of Debtor in full within a period of less than six months. That Debtor's present predicament is caused by the conspiracy to wreck the Debtor's business as aforesaid and the illness of said W. J. Shaw; said W. J. Shaw is now able to continue the active control and management of Debtor's business and Debtor is satisfied that within a period of less

than six months, all of its obligations can be liquidated in full, and by reason thereof an order should be made and entered herein keeping the Debtor in possession of its said assets and also directing the release of all attachments and garnishments now on the property of the Debtor.

### X.

That in action No. 437-237 in the Superior Court in and for the County of Los Angeles, State of California, entitled Edward D. Hubbard vs. W. J. Shaw and Jumbo Consolidated Mining Company, a corporation, in which said action a garnishment was levied March 7th, 1939 on certain bullion concentrates and property of the Debtor in the possession of the American Smelting and Refining Co., and which said attachment is a serious handicap to the operation of Debtor's business in connection with the meeting of the Debtor's pay-roll and other current operating expenses.

### XI.

That a majority in number and amount of the creditors of the Debtor are in favor of Debtor remaining in possession of his assets and have intimated full and complete confidence in the Debtor in the management of his business [5] and its ability to pay their claims in full.

Wherefore your Debtor prays that proceedings may be had upon this petition in accordance with the provisions of Chapter 11 of the Act of Congress

relating to Bankruptcy; that the Debtor be granted a period of thirty days within which to file a schedule of its assets and liabilities herein, and a statement of its affairs; that the Court make an order herein to retain the Debtor in possession and control of its business and property; that an order be made and entered herein releasing attachments on Debtor's property and restraining the prosecution of any action against the Debtor by any creditor or other person, and restraining the foreclosure of any of Debtor's property as a pledge or otherwise.

JUMBO CONSOLIDATED

MINING COMPANY,

a corporation,

By W. J. SHAW,

President

Debtor.

THOS. P. MENZIES and

WALTER C. DURST,

By WALTER C. DURST,

Attorneys for Debtor. [6]

EXHIBIT A

L. C. Duncan, 506 Bay Cities Bldg., Santa Monica, Calif. ....	\$7,300.00
Dr. George S. Leven, Channel Rd., Santa Monica Canyon, Santa Monica, California.....	6,200.00
Wyman Williams, 1401 California St., Santa Monica, Calif. ....	3,400.00
Dr. Homer J. Arnold, 412 W. 6th St., Los Angeles, Calif. ....	2,700.00
Emily Rice and Florence Arnold, 503 4th Ave., Los Angeles, Calif. ....	8,000.00
Tony Busier, 506 Bay Cities Bldg., Santa Monica, Calif. ....	22,000.00
W. C. Pope, Copperopolis, California.....	5,000.00
E. D. Hubbard, 9921 Durant Drive, Los Angeles, California .....	8,500.00
Mary Wikoff, Successor in interest of Henry L. Wikoff, 1354 No. Detroit, Los Angeles, Cal.....	3,100.00
Mary Wikoff, 1354 No. Detroit, Los Angeles, Calif. ....	2,260.00
Elizabeth Hamilton, 1354 No. Detroit, Los Angeles, Calif. ....	6,700.00
American Forge Co., 1823 E. Washington Blvd., Los Angeles, Calif. ....	183.17
Braun Corporation, 2260 E. 15th, Los Angeles, California .....	179.00
Limited Mutual Insurance Co., 510 W. 6th St., Los Angeles, Calif. ....	635.75
Nelson August, Copperopolis, California.....	6,591.62
John L. Witney, Jamestown, California.....	457.40
Western Machinery, Santa Monica, California.....	263.99
Pacific Ball Mfg. Co., Huntington Park, California.....	2,036.03
Calkins Company, 934 So. Main, Los Angeles, California .....	49.44
Graylor Engineering Co., Los Angeles, Calif.....	186.33
Industrial Indemnity Exchange, 112 West 9th St., Los Angeles, Calif. ....	135.73

[7]



## EXHIBIT B

### EXECUTORY CONTRACTS

American Smelting and)  
 Refining Company, )  
 405 Montgomery Street,) Contract for smelting concentrates  
 San Francisco, California)

T. J. McCarty, Estate, ) Agreement to pay \$150.00 per month  
 Copperopolis, California) until dividend on 40,000 shares of  
 Debtor stock equals \$150.00 per month

Robert D. Parks, ) Agreement to pay \$250.00 per month  
 Clark Hotel, ) until dividend on 40,000 shares of  
 Stockton, California ) Debtor stock equals \$250.00 per month

[8]

United States of America  
 Southern District of California  
 Central Division—ss.

W. J. Shaw being by me first duly sworn, deposes and says: that he is the President of Jumbo Consolidated Mining Company, a corporation, and as such is duly authorized to make this verification on behalf of said Debtor, in the above entitled action; that he has read the foregoing Debtor's Petition and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

W. J. SHAW.



Subscribed and sworn to before me this 15th day of March, 1939.

(Seal)                      SPENCER CABURNE,  
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Debtor's Petition. Filed Mar. 15, 1939, 4:48 P.M. R. S. Zimmerman, Clerk. By F. Betz, Deputy Clerk. [9]

---

[Title of District Court and Cause.]

**CERTIFICATE OF RESOLUTION OF DIRECTORS  
CONSENTING TO CHAPTER 11  
PROCEEDINGS.**

I, the undersigned Assistant Secretary of the Jumbo Consolidated Mining Company, do certify that a meeting of the Board of Directors of the said Jumbo Consolidated Mining Company, a corporation created under the laws of the State of Nevada, was held, pursuant to the provisions of the By-Laws of said corporation, at Santa Monica, in the County of Los Angeles, and State of California on the 14th day of March, 1939: that at said meeting the condition of the affairs of said corporation having been inquired into and it having been ascertained to the satisfaction of said meeting that the said corporation was unable to meet its debts as they matured and that it should avail itself of the provisions of the National Bankruptcy Act, it was, upon motion made, seconded, carried and duly

“Resolved: That the Jumbo Consolidated Mining Company file a petition for relief of a debtor under the National Bankruptcy Act.

It Is Further Resolved: That the president of the corporation, Mr. W. J. Shaw, is hereby empowered and authorized to act on behalf of said corporation and sign all necessary documents to complete the procedure under the National Bankruptcy Act for the relief of debtors.”

In Witness Whereof, I have hereunto subscribed my name as Assistant Secretary of said corporation, and affixed the seal of the same this 15th day of March, 1939.

(Seal)

E. C. PARKS,

Asst. Secretary of said  
Corporation.

[Endorsed]: Certificate of Resolution of Directors Consenting to Chapter 11 Proceedings. Filed Mar. 15, 1939, 4:48 P.M. R. S. Zimmerman, Clerk, By F. Betz, Deputy Clerk. [10]

[Title of District Court and Cause.]

APPROVAL OF DEBTOR'S PETITION AND  
ORDER OF REFERENCE UNDER SEC-  
TION..... of the BANKRUPTCY ACT.

At Los Angeles, in said District, on March 16, 1939 before the said Court the petition of Jumbo Consolidated Mining Company, a corporation that It desires to obtain relief under Section 322 of the Bankruptcy Act, and within the true intent and meaning of all the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said petition is hereby approved accordingly.

It is thereupon ordered that said matter be referred to Samuel W. McNabb, Esq., one of the referees in bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said Jumbo Consolidated Mining Company, a corporation shall attend before said referee on March 23, 1939 and at such times as said referee shall designate, at his office in Los Angeles, California, and shall submit to such orders as may be made by said referee or by this Court relating to said matter.

Witness, the Honorable Paul J. McCormick, Judge of said Court, and the seal thereof, at Los Angeles, in said District, on March 16, 1939.

(Seal) R. S. ZIMMERMAN,  
Clerk,

By H. K. JACOBS,  
Deputy Clerk.

[Endorsed]: Filed Mar. 16, 1939, 12:02 P.M.  
R. S. Zimmerman, Clerk, By H. K. Jacobs, Deputy  
Clerk. [11]

[Title of District Court and Cause.]

ORDER OF ADJUDICATION OF  
BANKRUPTCY.

At Los Angeles in Said District, on the 11th Day of September, 1940:

The said Jumbo Consolidated Mining Company, a corporation, as debtor, having filed a petition under section 322, Chapter XI of the Bankruptcy Act, and a notice of meeting of the creditors having been called for confirmation of arrangement, which was set for July 18th, 1939, at 10:00 o'clock A.M., and the matter having been continued from time to time until August 21st, 1940, at 2:00 o'clock P.M., of said day, and due and regular notice having been given to all parties in interest of a meeting of creditors to be held September 11, 1940, at 2:00 o'clock P.M., at the court room of the undersigned Referee in Bankruptcy, 340 Federal Building, Temple and Spring Streets, Los Angeles, California, for the purpose of determining whether the said Jumbo Consolidated Mining Company be adjudged a bankrupt or the case then pending be dismissed, and, if adjudged a bankrupt, that an election of a trustee will be held, and it appearing that the said Jumbo Consolidated Mining Company has failed to deposit the money necessary to pay all debts which have priority, and not waived, and has failed to deposit the money necessary to pay the costs and expenses of the said debtor's proceeding within the time fixed by this court, and no feasible plan having been filed, and it is further appearing that the said

Jumbo Consolidated Mining Company has admitted in writing that it is insolvent and is unable to pay its debts as they mature, upon appli- [12] cation of creditors of said Jumbo Consolidated Mining Company that said corporation be adjudged a bankrupt under the Act of Congress relating to bankruptcy and that bankruptcy be proceeded with, and no adverse interest being represented at said hearing and no opposition expressed with regard thereto, upon motion of James H. Mitchell, hereinbefore duly and regularly appointed attorney for the Committee of Creditors of said Jumbo Consolidated Mining Company herein, and good cause appearing therefor, it is Ordered Adjudged and Decreed:

That said Jumbo Consolidated Mining Company, a corporation, is a bankrupt under the Act of Congress relating to bankruptcy and that bankruptcy be proceeded with; and that, upon the entry of this order, the proceedings shall be conducted, so far as possible, in the same manner and with like effect as if a voluntary petition for adjudication in bankruptcy had been filed, and a decree of adjudication had been entered, on the 15th day of March, 1939, the day when the petition under Chapter XI of said Act was filed herein.

SAMUEL W. McNABB,  
Referee.

[Endorsed]: Order of Adjudication of Bankruptcy. Filed Sep. 17, 1940, 10:40 A.M. R. S. Zimmerman, Clerk, By H. K. Jacobs, Deputy Clerk.

[Title of District Court and Cause.]

STIPULATION.

It is hereby stipulated by and between Hubert F. Laugharn, as Trustee for the said Jumbo Consolidated Mining Company, a corporation, Bankrupt, and Western-Knapp Engineering Company, a corporation, and Western Machinery Company, a corporation, that the Trustee's Petition to Recover Assets Fraudulently or Preferentially Transferred by Bankrupt and To Avoid Lien attached hereto and made a part hereof may be filed herein and heard by the Honorable Samuel W. McNabb, Referee in Bankruptcy, or any other referee who may be available, on Friday the 13th day of December, 1940, at 10:00 o'clock A.M., of said day, or as soon thereafter as it may be convenient with the court, and that all testimony heretofore introduced in evidence upon the hearing, on January 30, 1940, of the petition of Edward W. Hubbard, George F. Snyder, George W. Leach, Howard H. Wikoff and W. J. Shaw, as the Committee of Creditors of Jumbo Consolidated Mining Company, a corporation, as debtor, heretofore filed herein on or about September 29th, 1939, and the Order to Show Cause and Restraining Order issued pursuant thereto on September 29th, 1939, may be considered as evidence introduced upon the hearing of the said Trustee's Petition to the same extent and in the same manner as though originally introduced upon the hearing of the said Trustee's Petition; and that,



pending the hearing and final determination of said petition, and without prejudice to any of the rights of any of the parties hereto upon the issues joined and to be joined upon the annexed Petition to Recover Assets, a restraining order may be [14] issued by the above-entitled court restraining and enjoining said Western-Knapp Engineering Company, a corporation, and Western Machinery Company, a corporation, from taking any steps, or doing any thing, or taking any action, in connection with the removal of any of the mining machinery and equipment, or the foreclosure of the contracts of conditional sale, referred to in the said Trustee's petition, and that an order may be forthwith made and entered herein to carry into effect the object and purpose of this stipulation, and so that said petition may be duly and regularly heard by the above court.

It is hereby further stipulated that upon the filing herein of said annexed Petition to Recover Assets, and the issuance by the above-entitled court of the Order to Show Cause and Temporary Restraining Order hereinabove specified, the petition of said Committee of Creditors heretofore filed herein on the 29th day of September, 1939, and the Order to Show Cause thereon issued herein on said date, and to which said Western-Knapp Engineering Company, a corporation, and Western Machinery Company, a corporation, are respondents, shall be, by the above-entitled court, respectively dismissed and discharged, without prejudice.

Dated: November 13th, 1940.

HUBERT F. LAUGHARN,

Trustee for Jumbo Consoli-  
dated Mining Company,  
a corporation, Bankrupt.

JAMES H. MITCHELL,

CLIVE W. JOHNSON and

FRANK M. LUDWICK,

By JAMES H. MITCHELL,

Attorneys for said Trustee in  
Bankruptcy,

WESTERN-KNAPP

ENGINEERING COMPANY,  
a corporation,

By H. N. HOW (Seal)

President

WESTERN MACHINERY

COMPANY, a corporation,

By H. N. HOW (Seal)

President

ARTHUR P. SHAPRO,

Attorney for Western-Knapp  
Engineering Company and  
Western Machinery  
Company.

[Endorsed]: Filed Nov. 28, 1940, Samuel W. Mc-  
Nabb, Referee. Filed Aug. 22, 1941, R. S. Zimmer-  
man, Clerk. [15]



[Title of District Court and Cause.]

PETITION TO RECOVER ASSETS FRAUDU-  
LENTLY OR PREFERENTIALLY TRANS-  
FERRED BY BANKRUPT AND TO AVOID  
LIEN.

To the Honorable Samuel W. McNabb, Referee in  
Bankruptcy:

The petition of Hubert F. Laugharn, Trustee of  
the estate of the above named bankrupt, respect-  
fully represents:

I.

That on March 15th, 1939, Jumbo Consolidated  
Mining Company, a corporation, as Debtor, filed its  
petition under Section 322, Chapter XI of the  
Bankruptcy Act; and that said Jumbo Consolidated  
Mining Company, a corporation, was duly and regu-  
larly adjudicated a bankrupt on the 11th day of  
September, 1940. That on the 16th day of Septem-  
ber, 1940, your petitioner was appointed, and duly  
qualified, as Trustee of said estate, and is now act-  
ing as such Trustee.

II.

That the bankrupt is a corporation duly or-  
ganized and existing under and by virtue of the  
laws of the State of Nevada, and, at all times since  
on or about September 1st, 1937, said bankrupt has  
been qualified to do business, and has done and  
carried on business, in the State of California.  
That at all times hereinafter mentioned said bank-

rupt has been, and is now, a resident of the State of California residing, and having its principal place of business within the State of California, in the County of Los Angeles.

### III.

That Western-Knapp Engineering Company, a corporation, is a corporation duly organized and existing under and by virtue of the laws of the State of California. [16]

### IV.

That the Western Machinery Company is a corporation duly organized and existing under and by virtue of the laws of the State of Utah.

### V.

That petitioner is informed and believes, and upon such information and belief alleges, that on May 23d, 1938, an instrument in writing was delivered to said Western-Knapp Engineering Company purporting to convey to said Western-Knapp Engineering Company all of the bankrupt's right, title and interest in and to certain mining machinery and equipment then located at the Mt. King Mine and which was owned and in the possession of the bankrupt. That said property is more particularly set forth and described in Exhibit "B" attached to and made a part of the purported contract of conditional sale dated May 23d, 1938, wherein said Western-Knapp Engineering Company, a corpora-

tion, is designated as the seller and the bankrupt is designated as the buyer. That said mining machinery and equipment is more particularly set forth and described in Exhibit 1 attached hereto and made a part hereof. That the said Mt. King Mine is located in the County of Calaveras, State of California, and is now and has been at all times since on and prior to September 1st, 1937, a mining property operated, developed and in the possession of the bankrupt.

## VI.

That at the time of the said delivery of said purported conveyance the bankrupt had the possession and control of all said mining machinery and equipment but that said mining machinery and equipment was not, on the said 23d day of May, 1938, nor at any other time or at all, delivered to said Western-Knapp Engineering Company, nor has said Western-Knapp Engineering Company ever had possession thereof, and that at all times since on and prior to May 23d, 1938, the said mining machinery and equipment has remained in the possession of the bankrupt, during which time numerous persons [17] have become and now are creditors of the bankrupt. That the names of such creditors, and the amounts owing to them from the bankrupt incurred by the bankrupt during the time when the bankrupt had possession of said mining machinery and equipment, are more particularly set forth in the claims of such persons now on file herein in the above entitled proceeding.

## VII.

That petitioner is informed and believes, and upon such information and belief alleges, that on the said 23d day of May, 1938, an instrument purporting to be a contract of conditional sale was purportedly executed by and between said Western-Knapp Engineering Company, as seller, and the bankrupt, as buyer, wherein Western-Knapp Engineering Company purported to sell, and the bankrupt purported to buy, under the terms and conditions thereof certain mining machinery and equipment set forth and described in Exhibit "A" attached thereto and made a part thereof. That the purported contract of conditional sale, together with said Exhibit "A" and the above mentioned Exhibit "B", is now on file herein. That reference is made thereto for further particulars.

## VIII.

That petitioner is informed and believes, and upon such information and belief alleges, that on the said 23d day of May, 1938, a portion of said mining machinery and equipment described in Exhibit "A" was located in various counties of the State of California and certain other portions of said mining machinery and equipment was not in existence. That the description of said mining machinery and equipment described in said Exhibit "A", and the counties in which said mining machinery and equipment was located on the said 23d day of May, 1938, is set forth and described in

Exhibit 2 attached hereto and made a part hereof. That said contracts of conditional sales has never been recorded in the office of the County Recorder of any county except the County of Calaveras. [18]

### IX.

That petitioner is informed and believes, and upon such information and belief alleges, that at all times since on and after the 16th day of August, 1938, the bankrupt has had, and now has, the possession and control of all that certain mining machinery and equipment more particularly set forth and described in that certain schedule attached hereto, made a part hereof and marked Exhibit 3. That at no time during said period has said mining machinery and equipment, or any part thereof, been delivered to said Western Machinery Company, nor has said Western Machinery Company during any of said time had possession of said mining machinery and equipment, or any part thereof.

### X.

That petitioner is informed and believes, and upon such information and belief alleges, that on the said 16th day of August, 1938, a purported contract of conditional sale was purportedly executed by said Western Machinery Company, as seller, and the bankrupt, as buyer, wherein and whereby the said Western Machinery Company purported to sell, and the bankrupt purported to buy, said mining machinery and equipment described in Exhibit 3.

## XI.

That petitioner is informed and believes, and upon such information and belief alleges, that the Board of Directors of the bankrupt has never at any time authorized the execution of said purported contracts of conditional sale or said purported conveyances.

## XII.

That petitioner is informed and believes, and upon such information and belief alleges, that said purported contracts of conditional sale and said purported conveyances are fraudulent and [19] therefore void as against all the creditors of the bankrupt.

## XIII.

That petitioner is informed and believes, and upon such information and belief alleges, that said Western-Knapp Engineering Company, a corporation, and Western Machinery Company, a corporation, have threatened to proceed with the foreclosure of said purported contracts of conditional sale and remove the said mining machinery and equipment from the place of its present location at the Mt. King Mine in Calaveras County. That the removal of said mining machinery and equipment would prevent your petitioner from making a satisfactory sale of the property and assets of the bankrupt and make it impossible for your petitioner to obtain the benefits of avoiding said purported contracts of conditional sale and purported conveyances as pro-



vided by the Bankruptcy Act. That the said mining machinery and equipment constitutes the main assets of the bankrupt and is a very valuable asset of the bankrupt, having a reasonable value in place of approximately \$50,000.00. That great and irreparable injury and damage would be done to this estate if said Western-Knapp Engineering Company and Western Machinery Company were permitted to remove the same from its present location or in any way interfere therewith.

#### XIV.

That within four months prior to March 15, 1939, the bankrupt paid to said Western-Knapp Engineering Company and said Western Machinery Company upwards to \$10,000.00 for or on account of an antecedent debt, to-wit, the said purported contracts of conditional sale. That at the time of said payment the bankrupt was insolvent. That the effect of said payment will be to enable the said companies to obtain a greater percentage of their debt owing to them from the bankrupt than other creditors of the same class. That at the time of said payment the said companies and their agents acting with reference thereto had, at the time when [20] said payment was made, reasonable cause to believe that the bankrupt was insolvent.

Wherefore, petitioner prays that an order or orders issue:

1: Ordering that Western-Knapp Engineering Company, a corporation, and Western Machinery

Company, a corporation, be required to appear before this Honorable Court to be examined concerning the acts, conduct and property of the bankrupt and to bring with them the books and papers under their control relating to said properties.

2: Restraining Western-Knapp Engineering Company, a corporation, and Western Machinery Company, a corporation, and each of them, from proceeding with the foreclosure of said purported contracts of conditional sale with respect to the mining machinery and equipment therein described, and from doing anything or taking any action, legal or otherwise, in connection with the removal of said mining machinery and equipment, or any part thereof, from the possession of the bankrupt or the trustee, or from in any way interfering with the use, operation and sale of said mining machinery and equipment by the trustee herein, and that an order to show cause issue herein with respect thereto, and that until the return day thereof said Western-Knapp Engineering Company, a corporation, and Western Machinery Company, a corporation, and each of them, be restrained from doing any thing, or taking any action, legal or otherwise, in connection with the removal of said mining machinery and equipment, or any part thereof, from the possession of the bankrupt or the trustee, or from in any way interfering with the use and operation of said mining machinery and equipment by the trustee herein.



3: Ordering that the conditional sales contracts of Western-Knapp Engineering Company, a corporation, and Western Machinery Company, a corporation, respectively, are fraudulent and void as [21] to the lien or interest claimed by those companies in the mining machinery and equipment therein described as against all creditors of the bankrupt.

4: Ordering and finding that all payments of money made by the bankrupt to said Western-Knapp Engineering Company, a corporation, and Western Machinery Company, a corporation, within four months prior to March 15, 1939, constitute a preference as against the other creditors of the bankrupt, and determining the amount thereof.

5: Ordering and granting such other and further relief as to this court may seem proper.

HUBERT F. LAUGHARN,

Petitioner.

JAMES H. MITCHELL,

CLIVE W. JOHNSON and

FRANK M. LUDWICK,

By JAMES H. MITCHELL,

Attorneys for Petitioner.

State of California

County of Los Angeles—ss.

Hubert F. Laugharn, being by me first duly sworn, deposes and says; that he is the petitioner in the above entitled action; that he has read the fore-

going Petition and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information and belief, and as to those matters that he believes it to be true.

HUBERT F. LAUGHARN.

Subscribed and sworn to before me this 17th day of October, 1940.

(Seal) JAMES H. MITCHELL,  
Notary Public in and for the County of Los Angeles, State of California. [22]

---

EXHIBIT 1

- 1—5x5 Marey Ball Mill, #397, with V-belt drive and 60 HP motor, complete with sheave, slide rails and compensator.
- 3—Fagergren Flotation Machines, size 11-s, Type Std. Square, 720 RPM, Serial Nos. 21, 22 & 23.
- 2—Fagergren Flotation Machines, size 36x9, Type Std. Square, 600 RPM, one Serial No. 322, no number other machine.
- 1—Fagergren Flotation Machine, size 9-S Type Std. Square, 900 RPM, Serial No. S-51.
- 1—54" Duplex Dorr Classifier, with motor and V-belt drive, classifier Serial No. 1275D.
- 1—18x18 Pan American Jig, Type AC, No. 271.
- 1—Hoist Motor, Westinghouse Oil Well Motor, varying speed, 75 HP, 440 volts, 50/60 cycle, 3 phase, style 21C482, Frame 752, 90 Amps, 970-1160 RPM, full load, Serial #4501040.
- 1—Westinghouse Controller, Frame 50, Style S020 E171.

[23]

EXHIBIT "2"

Counties in  
which located  
5-23-38

- |   |               |
|---|---------------|
| 1—22x13x16 Ingersoll-Rand, Imperial Type, 2 stage, Air Compressor, complete with 200 HP, General Electric, 440 volt, 3 phase, 60 cycle motor, furnished with sheave and 13 V-belts, complete with sliding base and compensator. | Mariposa      |
| 1—100 H.P. Double Drum Ottumwa Iron Works Mine Hoist, complete with 100 H.P., 440 volt, 3 phase, 60 cycle, variable speed motor complete with resistance grids and drum controller.   | State of Utah |
| 1—Taper Bar Grizzly.  | Non-existent  |
| 1—15x38 Wheeling Jaw Crusher with V-belt drive and 75 HP, 440 volt, 3 phase, 60 cycle motor, with sliding base and compensator.   | Sacramento    |
| 1—16" Belt Conveyor with magnetic pulley and motor generator set.   | Calaveras     |
| 1—4x5 Leahy Vibrating Screen.   | Calaveras     |
| 1—2'4" Type TY Traylor Secondary Crusher, complete with 75 HP, 440 volt, 3 phase 60 cycle motor, with sliding base, V-belt drive and compensator  | Non-existent  |
| 1—8x5 Bucket Elevator, 40' centers, with gear head, motor and drive   | Calaveras     |
| 1—16" Adjustable Speed Belt Feeder, with 16" conveyor to present ball mill with motor and drive.  | Non-existent  |
| 1—Adjustable Speed Belt Feeder for new ball mill with motor and drive.  | Non-existent  |
| 1—6x8 Handy Overflow Ball Mill, with motor and V-belt drive.  | Calaveras     |
| 1—6'x23'4" Model BHM Wemco Classifier with variable speed drive and U. S. Motor   | Tuolumne      |
| 1—26"x26", 2-cell, Bendelari Jig.   | Calaveras     |

Counties in  
which located  
5-23\_38

1—3" Wilfley type pump with 7½ HP motor and drive.	Non-existent
4—44" Fagergren Flotation Cells, motor driven, with reagent feeders.	Tuolumne
1—16'x8' Thickener Tank, complete with low head superstructure, motor, mechanism, overflow launder and sills; 2 inch diaphragm pump complete with motor and driver.	Non-existent
1—4', 3 disc New American Type Filter.	Arizona
1—Deister-Plato Concentrating Table, with motor and drive.	Non-existent

[24]

### EXHIBIT "3"

- 1—Pantograph—Ratio 15½ to 1
- 1508'4"—1" Standard Black Pipe
- 4—50' lengths, ¾" Air Hose, complete with couplings
- 4—50' lengths, ¾" Air Hose, complete with couplings
- 5—50' lengths, Water Hose, complete with couplings
- 1—400 Amp. Style 918-153, Type ABI, 3 pole, 600 volt, Westinghouse Circuit Breaker
- 1—600 Amp. Style 918-157, Type ABI, 3 pole, 600 volt, Westinghouse Circuit Breaker
- 1—2"MRV25, Ingersoll-Rand Cameron Motor Pump, with cross-the-line starter, magnetic push button, over and under voltage protection, suction and discharge flanges.
- 1—50 cu. ft. 28" gauge, Roller Bearing Ore Skip
- 1—type 6 HC, Ingersoll-Rand, double drum, Air Hoist
- 2—HNN-1-J, Ingersoll-Rand, double drum, Air Hoists, Serials Nos. 306 & 379-S @ 820.00
- 3—WEMCo Slip Scrapers, with bridles @ 150.00

- 1—No. 5, Ingersoll-Rand Drill Sharpener, complete with accessories for 1" quarter octagon steel, Serial No. 1625, IRLP shank & bit punch and late type hammer cylinder
- 6—24 cu. ft., 18" gauge, roller bearing, Greene Side Dump Ore Cars @ 145.00
- 4—DA30 Ingersoll-Rand Air Drifters, Serial Nos. 456570, 457918, 457884, & 457923 @ 390.00
- 1—SAR-120, Ingersoll-Rand Stoper with 1" quarter octagon chuck, Serial No. 442018
- 3—3½"x7' Columns complete @ 60.00
- 2—Column Clamps @ 3.10
- 2—#1167 Chuck Wrenches @ 3.00
- 3—3½" Column Arms @ 21.00
- 2—3½" Saddles @ 21.00

[Endorsed]: Stipulation and Petition Filed Nov. 28, 1940. Samuel W. McNabb, Referee. Filed Aug. 22, 1941 R. S. Zimmerman, Clerk. [25]

---

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE ON TRUSTEE'S  
PETITION TO RECOVER ASSETS  
FRAUDULENTLY OR PREFERENTI-  
ALLY TRANSFERRED BY BANKRUPT  
AND TO AVOID LIEN.

At Los Angeles, in Said District, on the 28th Day  
of November, 1940:

Upon the Petition of Hubert F. Laugharn, Trus-  
tee of the Estate of the said bankrupt, verified the  
17th day of October, 1940, and filed, for an Order

to Show Cause and Restraining Order against the respondents, Western-Knapp Engineering Company, a corporaiton, and Western Machinery Company, a corporation, and the Stipulation of the said respondents and their attorney, Arthur P. Shapro, and the said Trustee and his attorneys, James H. Mitchell, Clive W. Johnson and Frank M. Ludwick, dated November 13th, 1940, and upon motion of the said trustee, no adverse interests being represented, it is

Ordered that respondents, Western-Knapp Engineering Company, a corporation, and Western Machinery Company, a corporation, be and appear before this court in the courtroom thereof on the third floor of the Federal Building, 312 North Spring Street, Los Angeles, California, on the 16th day of December, 1940, at the hour of 10:00 o'clock A. M., of said day, and then and there set up their respective claims to the machinery and equipment referred to and described in said petition or be forever debarred from asserting the same, and bring with them the books and papers under their control relating to the said machinery and equipment, and show cause why

1: An order should not be made and entered herein restraining the said respondents and each of them from proceeding with the foreclosure of the purported contracts of conditional sale referred to in said petition with respect to the mining machinery and equip- [27] ment described in said petition, and from doing anything or taking any

action, legal or otherwise, in connection with the removal of the said mining machinery and equipment or any part thereof from the possession of the bankrupt or the trustee, or from in any way interfering with the use, operation and sale of said mining machinery and equipment by the trustee herein; and,

2: An order should not be made ordering, declaring and finding that the said conditional sales contracts of the said respondents, Western-Knapp Engineering Company, a corporation, and Western Machinery Company, a corporation, respectively, are and each of them is fraudulent and void as to the lien or interest claimed by said respondents in the said mining machinery and equipment; and,

3: An order should not be made ordering and finding that all payments of money made by the Bankrupt to said respondents, Western-Knapp Engineering Company, a corporation, and Western Machinery Company, a corporation, within four months prior to March 15th, 1939, constitute a preference as against the other creditors of the bankrupt and determining the amount thereof; and,

4: An order should not be made granting such other and further relief as to the said court may seem proper.

Ordered that pending the hearing of the within order to show cause and until further order herein the said respondents, Western-Knapp Engineering Company, a corporation, and Western Machinery



Company, a corporation, and each of them, be, and they are hereby, restrained and enjoined from doing anything or taking any action, legal or otherwise, in connection with the removal of said mining machinery and equipment or any part thereof from the possession of the bankrupt or the trustee, or from in any way interfering with the use and operation of said mining machinery and equipment by the trustee herein.

Ordered that service of this order may be made upon the said respondents, Western-Knapp Engineering Company, a corporation, and Western Machinery Company, a corporation, by mailing a [28] certified copy of this order to show cause and restraining order to their attorney, Arthur P. Shapro, Esq., at 420 Russ Building, San Francisco, California, on or before the 28th day of November, 1940.

HUGH L. DICKSON

Referee.

[Endorsed]: Filed Feb. 13, 1942. R. S. Zimmerman, Clerk. [29]



ARTHUR P. SHAPRO

420 Russ Building

San Francisco, California

Douglas 0664

Attorney for Respondents,

Western-Knapp Engineering Co.

and Western Machinery Company

[Title of District Court and Cause.]

ANSWER TO "PETITION TO RECOVER  
ASSETS FRAUDULENTLY OR PREFER-  
ENTIALLY TRANSFERRED BY BANK-  
RUPT AND TO AVOID LIEN."

Come now Western-Knapp Engineering Co., a corporation, and Western Machinery Company, a corporation, and answer as follows the "Petition to Recover Assets Fraudulently or Preferentially Transferred by Bankrupt and to Avoid Lien," heretofore filed herein by Hubert F. Laugharn, Trustee of the estate of the Bankrupt above-named.

[30]

I.

Admit each and every, all and singular, the allegations contained in paragraphs numbered I, III and IV of said Trustee's Petition.

II.

Deny that at all times in said Trustee's Petition mentioned and/or at any time or at all, said Bankrupt has been and/or is now a resident of the State of California and/or that said Bankrupt was or is residing and/or had or has had, or is having its

principal place within the State of California, in the County of Los Angeles, and except as hereinabove otherwise denied, Respondents admit the allegations set forth in paragraph II of said Trustee's Petition.

### III.

Admit each and all of the allegations contained in paragraph V of said Trustee's Petition; and in that connection, Respondents allege that the original of said Bill of Sale, dated and duly executed by said Bankrupt on the said 23rd day of May, 1938, is on file with the above-entitled Court in the above-entitled proceeding, in that same was, by Respondents, regularly introduced and received in evidence by Hon. Samuel W. McNabb, Referee in Bankruptcy, at a hearing had before said Court on the 30th day of January, 1940, upon the petition of Edward W. Hubbard, George F. Snyder, George W. Leach, Howard H. Wikoff and W. J. Shaw, as the Committee of Creditors of said Bankrupt, theretofore filed herein on or about the 29th day of September, 1939, and upon which said Referee, on said 29th day of September, 1939, issued an Order to Show Cause and Restraining Order, to which these Respondents were parties, and which said Bill of Sale was and is marked as "Respondents' Exhibit C" herein, and same is hereby expressly referred to and made part of this Answer. [31]

### IV.

Admit each and every, all and singular, the allegations contained in paragraph VI of said Trustee's

Petition, saving and excepting that Respondents deny, for lack of information or belief sufficient to enable them, or either of them, to answer in that regard, the allegations and/or recitals contained in said paragraph VI, commencing with the word "during" on the last line of page 2 in said Trustee's Petition, and ending on line 6 of page 3 of said Petition.

### V.

Admit each and all of the allegations contained in paragraph VII of said Trustee's Petition; and in that connection Respondents allege that the original of said Contract of Conditional Sale, dated the said 23rd day of May, 1938, but executed by said Bankrupt and Respondent Western-Knapp Engineering Co. on the 24th day of May, 1938, and within twenty days thereafter was duly recorded in the office of the County Recorder of the County of Calaveras, State of California, is designated and marked by the above-entitled Court as "Petitioner's Exhibit No. 6" herein, and was received in evidence by the above-entitled Court at the aforesaid hearing held before said Court on the said 30th day of January, 1940, and Respondents further allege that coincidentally with the making, execution and delivery of the aforesaid Contract of Conditional Sale, more particularly in said paragraph VII of said Trustee's Petition referred to, there was made, executed and delivered, by said Bankrupt to said Respondent Western-Knapp Engineering Co., a Supplemental Agreement on Conditional Sale, simi-

larly dated the said 23rd day of May, 1938, the original of which is on file herein, which was received in evidence by said Court as, and marked, "Respondents' Exhibit A" upon said hearing, held before said Court on the said 30th day of January, 1940, [32] and that Respondents hereby expressly refer to said original Contract of Conditional Sale and Supplemental Agreement on Conditional Sale and make them a part of this Answer.

#### VI.

Admit each and all of the allegations contained in paragraph VIII of said Trustee's Petition; and in that connection Respondents allege that the locations of various portions of said mining machinery and equipment, more particularly referred to in said paragraph and set forth in Exhibit "2" of said Trustee's Petition, were the same on the 24th day of May, 1938, as they were on the 23rd day of May, 1938, as in said Trustee's Petition alleged.

#### VII.

Admit each and every, all and singular, the allegations contained in paragraph IX of said Trustee's Petition.

#### VIII.

Admit each and every, all and singular, the allegations contained in paragraph X of said Trustee's Petition; and in that connection, Respondents allege that the original of said Contract of Conditional Sale, dated the said 16th day of August, 1938,

but executed by said Bankrupt and Respondent Western Machinery Company on the 17th day of August, 1938, and within twenty days thereafter was duly recorded in the office of the County Recorder of the County of Calaveras, State of California, is designated and marked by the above-entitled Court as "Petitioner's Exhibit No. 1" herein, and was received in evidence by the above-entitled Court at the aforesaid hearing held before said Court on the said 30th day of January, 1940.

### IX.

Deny each and every, all and singular, the allegations contained in paragraph XI of said Trustee's Petition; and [33] Respondents allege that at a regular meeting of the Board of Directors of said Bankrupt, held on or about the 26th day of January, 1939, in the City and County of San Francisco, and at which all of the members of said Board of Directors were personally present and participated therein, certain amendments to the aforesaid Contracts of Conditional Sale, made by said Bankrupt, respectively, with Respondents Western-Knapp Engineering Co. and Western Machinery Company, and dated, respectively, as aforesaid, the 23rd day of May, 1938, and the 16th day of August, 1938, were approved and confirmed; and that duly certified copies of the minutes of said meeting of said Board of Directors, and of the aforesaid resolutions modifying, in certain particulars only, the terms of said Contracts of Conditional Sale, are on

file herein and marked "Respondents' Exhibits E and F" of said hearing held before said Court on the said 30th day of January, 1940, and Respondents hereby expressly refer to said certified copies of said minutes and resolutions and make same a part of this Answer.

### X.

Deny each and every, all and singular, the allegations contained in paragraph XII of said Trustee's Petition, and Respondents hereby expressly refer to and make part of this Answer, their respective Answers verified on the 5th day of October, 1939, and heretofore filed herein, upon and in response to the Order to Show Cause and Petition of Creditors' Committee, more particularly hereinabove referred to, and respectively issued by this Court and/or filed herein by said Creditors' Committee on the said 29th day of September, 1939; and Respondents hereby re-aver, as part of this Answer to said Trustee's Petition, each and all of the allegations contained in their respective previous Answers, saving and excepting the allegations of paragraphs numbered VI in said previous Answers, heretofore verified [34] herein by these Respondents on the said 5th day of October, 1939, and heretofore filed herein as aforesaid.

### XI.

Admit the allegations contained in the first sentence of paragraph XIII of said Trustee's Petition, ending with the words "Calaveras County" on



line 9 of page 5 of said Petition, and deny each and every, all and singular, the other allegations and/or recitals contained in said paragraph XIII of said Trustee's Petition.

## XII.

With respect to the allegations set forth in paragraph XIV of said Trustee's Petition, Respondents admit that there was, within the four months next preceding the 15th day of March, 1939, paid by said Bankrupt to Respondent Western-Knapp Engineering Co., on account of the said Contracts of Conditional Sale between said Bankrupt and these Respondents, the sum of \$10,000.00; and in that connection, Respondents allege that on or about the 31st day of January, 1939, said Respondent Western Machinery Company, for value, assigned and transferred its said Contract of Conditional Sale with said Bankrupt, dated the said 16th day of August, 1938, to Respondent Western-Knapp Engineering Co., and that Respondent Western-Knapp Engineering Co. ever since has been and still is the lawful owner and holder thereof, and is entitled to all of the rights and privileges thereunder of the "Seller" therein named; and that all payments made by said Bankrupt in the premises, on or after the 26th day of January, 1939, were so made by said Bankrupt to Respondent Western-Knapp Engineering Co. and were applied by said payee to and in reduction of the obligations of said Bankrupt under and on account of both of the aforesaid Contracts



of Conditional Sale between said Bankrupt and these Respondents. [35]

Except as herein in this paragraph of this Answer otherwise admitted, these Respondents deny each and every, all and singular, the allegations contained in said paragraph XIV of said Petition.

### XIII.

That there was due and owing to Respondent Western-Knapp Engineering Co. as of the 7th day of October, 1940, a balance of \$38,910.02, inclusive of principal and accrued interest, upon said Contracts of Conditional Sale between said Bankrupt and said Respondent, and Respondent Western Machinery Company, no part of which has been paid, and the whole of which, plus interest accruing, pursuant to the terms of said Contracts, subsequent to the said 7th day of October, 1940, is now wholly past due and payable to said Respondent Western-Knapp Engineering Co.

### XIV.

That by reason of the premises and of the allegations hereinabove and in the two previous Answers (respectively verified by these Respondents on the 5th day of October, 1939, and heretofore filed herein) set forth, Respondents are, and at all of the times hereinabove and in said Trustee's Petition set forth were, the owners of each and all of the personal property more particularly in said two Contracts of Conditional Sale and in said Exhibits

Nos. 1, 2 and 3 of said Trustee's Petition described; and are entitled to possession of each and all of said personal property, as against the estate of said Bankrupt and/or Hubert F. Laugharn, as such Trustee of said estate.

Wherefore, Respondents, and each of them, pray that said Trustee take nothing by reason of his said "Petition to Recover Assets Fraudulently or Preferentially Transferred by Bankrupt and to Avoid Lien"; that Orders be herein made denying said Trustee's Petition, with prejudice to the renewal thereof, discharging the [36] Order to Show Cause heretofore issued herein by Hon. Hugh L. Dickson, Referee in Bankruptcy, on the 28th day of November, 1940, and dissolving the Temporary Restraining Order in said Order to Show Cause contained; and for such other, further and different order, judgment, decree or relief as to this Honorable Court may seem just in the premises.

WESTERN-KNAPP ENGI-  
NEERING CO.,

By H. N. HOW [Seal]

Its President

WESTERN MACHINERY  
COMPANY,

By H. N. HOW [Seal]

Its President

Respondents.

ARTHUR P. SHAPRO

Attorney for Respondents

United States of America  
Northern District of California  
City and County of San Francisco—ss.

H. N. How, being first duly sworn, deposes and says:

That he is an officer, to wit, President, of Western-Knapp Engineering Co., a corporation, and Western Machinery Company, a corporation, respectively, the Respondents named in the foregoing Answer, and as such is duly authorized to and does make this verification on behalf of said corporations. That he has read said Answer and knows the contents thereof, and that the same is true of his knowledge, except as to those matters therein alleged on information or belief, and as to such matters he believes it to be true.

H. N. HOW

Subscribed and sworn to before me this 12th day of December, 1940.

[Seal]

LOUIS WIENER

Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed Dec. 13, 1940. Hugh L. Dickson, Referee. Filed Aug. 22, 1941. R. S. Zimmerman. Clerk. [37]

[Title of District Court and Cause.]

### STIPULATION

It is hereby stipulated by and between O. T. Gilbank, as Trustee for the said Jumbo Consolidated Mining Company, a corporation, Bankrupt, and Western-Knapp Engineering Company, a corporation, and Western Machinery Company, a corporation, that said O. T. Gilbank, as trustee for the said Jumbo Consolidated Mining Company, a corporation, Bankrupt, may be substituted as the petitioner in the place and stead of Hubert F. Laugharn in the petition to recover assets fraudulently or preferentially transferred by bankrupt and to avoid lien now on file herein, and that paragraph I of said petition may be amended to read as follows:

“That on March 15th, 1939, Jumbo Consolidated Mining Company, a corporation, as Debtor, filed its petition under Section 322, Chapter XI of the Bankruptcy Act; and that said Jumbo Consolidated Mining Company, a corporation, was duly and regularly adjudicated a bankrupt on the 11th day of September, 1940. That on the 16th day of September, 1940, Hubert F. Laugharn was duly and regularly appointed, qualified and acted as trustee of said estate. That thereafter said Hubert F. Laugharn duly and regularly resigned as trustee of said estate whereupon your petitioner, O. T. Gilbank, was duly and regularly appointed and qualified as trustee of said estate and is now acting as such trustee.”

It is further stipulated that all stipulations and pleadings heretofore filed by said Hubert F. Laugharn shall have the same force and effect as though originally entered into or filed by said O. T. Gilbank as trustee of the estate of the above [38] named bankrupt.

Dated: February 19th, 1940.

O. T. GILBANK

Trustee for Jumbo Consolidated  
Mining Company, a corporation,  
a Bankrupt

JAMES H. MITCHELL, CLIVE  
W. JOHNSON and FRANK M.  
LUDWICK

By JAMES H. MITCHELL  
Attorneys for said Trustee in  
Bankruptcy.

WESTERN-KNAPP ENGI-  
NEERING COMPANY,  
a corporation,

By H. N. HOW  
President

WESTERN MACHINERY  
COMPANY, a corporation

By H. N. HOW  
President

ARTHUR P. SHAPRO  
Attorney for Western-Knapp  
Engineering Company and  
Western Machinery Company

[Endorsed]: Filed Feb. 19, 1941. Hugh L. Dickson, Referee. Filed Aug. 22, 1941. R. S. Zimmerman, Clerk. [39]

[Title of District Court and Cause.]

ORDER

At Los Angeles in Said District on the 6th Day of  
June, 1941:

Hubert F. Laugharn, as trustee of the estate of Jumbo Consolidated Mining Co., a corporation, Bankrupt, having duly and regularly filed his petition to recover assets fraudulently or preferentially transferred by the bankrupt and to avoid liens claimed by Western-Knapp Engineering Co., a corporation, and Western Machinery Company, a corporation, and an Order to Show Cause having been issued upon said Trustee's petition wherein said Western-Knapp Engineering Co., a corporation, and Western Machinery Company, a corporation, were required to show cause why

1: an order should not be made and entered herein restraining the said respondents and each of them from proceeding with the foreclosure of the purported contracts of conditional sale referred to in said petition with respect to the mining machinery and equipment described in said petition, and from doing anything or taking any action, legal or otherwise, in connection with the removal of the said mining machinery and equipment or any part thereof from the possession of the bankrupt or the trustee, or from in any way interfering with the use, operation and sale of said mining machinery and equipment by the trustee herein; and

2: an order should not be made ordering, declaring and finding that the said conditional sales contract of the said respondents, Western-Knapp Engineering Co., a corporation, and Western Machinery Company, a corporation, respectively, are and each of them is fraudulent and void as to the lien or interest claimed by said respondents in the said mining machinery and equipment; and, [40]

3: an order should not be made ordering and finding that all payments of money made by the bankrupt to said respondents, Western-Knapp Engineering Co., a corporation, and Western Machinery Company, a corporation, within four months prior to March 15, 1939, constitute a preference as against the other creditors of the bankrupt and determining the amount thereof; and,

4: an order should not be made granting such other and further relief as to the said court may seem proper.

And said respondents, Western-Knapp Engineering Co., a corporation, and Western Machinery Company, a corporation, having duly and regularly filed their answer herein to said trustee's petition and it being duly and regularly stipulated by and between said petitioner and said respondents that all the testimony introduced at the hearing of January 30, 1940, upon the petition of the Committee of Creditors filed herein on September 29, 1939, may be considered as evidence introduced upon the



hearing of the said trustee's petition to the same extent and in the same manner as though originally introduced upon the hearing of the said trustee's petition, (said petition of the Committee of Creditors being a petition filed by the Committee of Creditors of Jumbo Consolidated Mining Co., a corporation, as a Debtor under Chapter XI proceedings herein alleging, among other things, that the liens and interest claimed by said respondents and each of them in and to the mining machinery and equipment and under the conditional sales contracts alleged in the trustee's petition herein are void for various reasons therein stated, to which petition reference is hereby made for further particulars); and it further appearing that the said trustee's petition was duly and regularly set down for hearing and heard on February 19, 1941; and upon the stipulation of the said trustee and said respondents, the parties hereto, duly and regularly filed, O. T. Gilbank, as Trustee of the Estate of said bankrupt, was duly and regularly substituted in the place and stead of said Hubert F. Laugharn as the petitioner in said [41] trustee's petition, said Hubert F. Laugharn having duly and regularly resigned as Trustee of said estate; and said O. T. Gilbank having been, on January 7, 1941, duly and regularly appointed and qualified and is now acting as Trustee of the estate of said bankrupt; and paragraph I of said Trustee's petition having been duly and regularly amended accordingly; and said petitioner, O. T. Gilbank, as Trus-

tee of the estate of said bankrupt, and said respondents each appearing personally and by his respective counsel at the hearing, said O. T. Gilbank, as Trustee of the estate of said bankrupt and his attorney, James H. Mitchell, appearing in support of said petition, and said respondents and each of them and their attorney, Arthur P. Shapro, appearing in opposition thereto, and oral and documentary evidence having been introduced, and the court having been fully advised, and it appearing:

1: That on March 15, 1939, Jumbo Consolidated Mining Co., a corporation, as Debtor, filed its petition under Section 322, Chapter XI of the Bankruptcy Act; and that said Jumbo Consolidated Mining Co., a corporation, was duly and regularly adjudicated a bankrupt on the 11th day of September, 1940. That on the 16th day of September, 1940, Hubert F. Laugharn was duly and regularly appointed, qualified and acted as trustee of said estate. That thereafter said Hubert F. Laugharn duly and regularly resigned as trustee of said estate whereupon said petitioner, O. T. Gilbank, was duly and regularly appointed and qualified as trustee of said estate and is now acting as such trustee.

2: That the bankrupt is a corporation duly organized and existing under and by virtue of the laws of the State of Nevada, and, at all time since on or about September 1, 1937, said bankrupt has been qualified to do business, and has done and carried on business, in the State of California. That

the Articles of Incorporation of said bankrupt provide, among other things that it may conduct all corporate business of every kind and nature outside the State of Nevada. That, except for the organization [42] meeting held at Reno, Nevada, April 13, 1936, the first meeting of the bankrupt was held April 25, 1936, at 1119 Banks-Huntley Building, Los Angeles, California, at which time the Board designated the Bank of America, with offices at 660 South Spring Street, Los Angeles, as the depository for the company.

The next meeting was on October 21, 1936, at 1119 Banks-Huntley Building, pursuant to a waiver of notice stating that the meeting shall be held "at the office of said corporation in Room 1119 Banks-Huntley Building, in the City of Los Angeles, County of Los Angeles, State of California \* \* \*".

That the minutes show that on October 22, 1936, another directors' meeting was held "in the office of the company, Room 1119 Banks-Huntley Building, in the City of Los Angeles, County of Los Angeles, State of California, \* \* \*".

That on November 5, 1936, a directors' meeting was held pursuant to a waiver of notice stating in part that the meeting was to be held "at the office of said corporation in Room 1119 Banks-Huntley Building, in the City of Los Angeles, County of Los Angeles, State of California".

That on June 4, 1937, a special meeting of the directors was held pursuant to waiver of notice

stating in part that the meeting was to be held "at the office of said corporation, room 1119 Banks-Huntley Building, in the City of Los Angeles, County of Los Angeles, State of California".

Thereafter the bankrupt moved its office to the Bay Cities Building at Santa Monica, in the said County of Los Angeles.

On September 1, 1937, the bankrupt duly qualified to do business in this state; that the statement of the bankrupt as a foreign corporation, required by the laws of this State, was duly filed in the office of the Secretary of State of the State of California, on that date and states that "the location and address of the principal office of said corporation within the State of California is Bay Cities Building, 225 Santa Monica Boulevard, in [43] the City of Santa Monica, County of Los Angeles, State of California," and that the name of the person residing in the State upon whom process directed to said corporation may be served is W. J. Shaw, giving his address, as provided by Civil Code Section 405, to be in Los Angeles County.

That the said respondents, Western-Knapp Engineering Co., a corporation, and Western Machinery Company, a corporation, knew that the office of the bankrupt in this State was in the County of Los Angeles, as indicated by the correspondence back and forth. The two purchase orders of Western Machinery Company (Pet. Ex. 2) dated July 14, 1938, specified 506 Bay Cities

Building, Santa Monica, California, as the main office of the bankrupt.

That the various documents, such as invoices and letters to W. J. Shaw, as president, in Exhibit 11 state the address of the bankrupt to be Bay Cities Bldg., Santa Monica, Calif.

That the conditional sales contract of August 16, 1938, with Western Machinery Company (Pet. Ex. 1) shows the address of the bankrupt to be Santa Monica, California.

That all of the books and records of the corporation have always been kept in Los Angeles County, except those required by the laws of Nevada to be kept in Reno.

That at all times since September 1, 1937, the said bankrupt has been and is now a resident of the State of California residing, and having its place of business within the State of California, in the County of Los Angeles.

3: That Western-Knapp Engineering Co., a corporation is a corporation duly organized and existing under and by virtue of the laws of the State of California.

4: That the Western Machinery Company is a corporation duly organized and existing under and by virtue of the laws of the State of Utah.

5: That sometime prior to May 23, 1938, Mr. Thyle, as the representative of Western-Knapp Engineering Co., visited the mine [44] and made a list of all the personal property owned by the bankrupt which he could find at the mining properties



of the bankrupt, which mining properties are hereinafter referred to as the Mt. King Mine. That on May 23, 1938, an instrument in writing (Res. Ex. "C") was delivered to said Western-Knapp Engineering Co., purporting to be a bill of sale conveying to said Western-Knapp Engineering Co., all of the bankrupt's right, title and interest in and to the said mining machinery and equipment then located at the Mt. King Mine and which was owned and in the possession of the bankrupt. That said property is also set forth and described in Exhibit "B" attached to and made a part of the purported contract of conditional sale dated May 23, 1938, (Pet. Ex. 6) wherein said Western-Knapp Engineering Co., a corporation, is designated as the seller and the bankrupt is designated as the buyer, and is also set forth and described in Exhibit 1 attached to and made a part of said trustee's petition to which reference is hereby made for further particulars, and is also set forth herein as Parcel One. That the only purpose of the said purported bill of sale was an attempt on the part of Western-Knapp Engineering Co., to obtain title to all the personal property owned by the bankrupt on May 23, 1938, as additional security for the payment of the property described in Exhibit "A" of said contract of conditional sale. That all of said personal property (described herein as Parcel One) has been in the possession and under the control of the bankrupt at all times since September 1, 1937.

6: That the said Mt. King Mine is located in the County of Calaveras, State of California, and is now and has been at all times since on and prior to September 1st, 1937, a mining property, operated, developed and in the possession of the bankrupt.

7: That, at the time of the said delivery of said purported bill of sale, the bankrupt had the possession and control of all said mining machinery and equipment and that said mining machinery and equipment (described herein as Parcel One) was not, on the said [45] 23rd day of May, 1938, nor at any other time or at all, delivered to said Western-Knapp Engineering Co., nor has said Western Knapp Engineering Co., ever had possession thereof, and that at all times since on and prior to May 23, 1938, the said mining machinery and equipment has remained in the possession of the bankrupt, during which time numerous persons have become and now are creditors of the bankrupt.

8: That on the said 23rd day of May, 1938, the said instrument purporting to be a contract of conditional sale (Pet. Ex. 6) was executed by said Western-Knapp Engineering Co., as seller, and the bankrupt, as buyer, wherein Western-Knapp Engineering Co., purported to sell, and the bankrupt purported to buy, under the terms and conditions thereof the mining properties and equipment described as Parcel One herein and also the said mining machinery and equipment set forth and described in Exhibit "A" attached thereto and



made a part thereof, and which is described herein as Parcel Two. That said mining machinery and equipment is also set forth and described in Exhibit 2 attached to and made a part of trustee's petition, to which reference is hereby made for further particulars.

9: That on the said 23rd day of May, 1938, a portion of said mining machinery and equipment described herein as Parcel Two was located in various counties of the State of California and certain other portions of said mining machinery and equipment were not in existence. That the description of said mining machinery and equipment described as Parcel Two herein, and the counties in which certain of said mining machinery and equipment was located, and the fact that other portions of said mining machinery and equipment were not in existence, on the said 23rd day of May, 1938, is indicated opposite the respective items of mining machinery and equipment described in Parcel Two hereof. That said contract of conditional sale was recorded May 28, 1938, in Book "U" of Agreements, at page 462, et seq., in the office of [46] the County Recorder of Calaveras County, California, but has never been recorded in the office of the County Recorder of any other county.

10: That at all times since on and after the 12th day of August, 1938, the bankrupt has had the possession and control of all that certain mining machinery and equipment more particularly set forth and described in Exhibit 3 annexed to and

made a part of said trustee's petition, to which reference is hereby made for further particulars, which mining machinery and equipment is also described herein as Parcel Three. That at no time during said period has said mining machinery and equipment, or any part thereof, been delivered to said Western Machinery Company, nor has said Western Machinery Company during any of said time had possession of said mining machinery and equipment, or any part thereof. That at all times since August 12, 1938, the said mining machinery and equipment has remained in the possession of the bankrupt, during which times numerous persons have become and now are creditors of the bankrupt. That all of the said mining machinery and equipment was ordered from the respondent, Western Machinery Company, on open account and delivered to the bankrupt during the period commencing May 19, 1938, to and including August 12, 1938, and that title thereto passed to the bankrupt at the time of such delivery.

· 11: That on the 16th day of August, 1938, a purported contract of conditional sale was executed by said Western Machinery Company, as seller, and the bankrupt, as buyer, wherein and whereby the said Western Machinery Company purported to sell, and the bankrupt purported to buy, said mining machinery and equipment described herein as Parcel Three. That said conditional sales contract was introduced in evidence herein and marked Petitioner's Exhibit 1. That said conditional sales con-

tract was recorded August 20, 1938, in Book 4 of Official Records, at page 293, et seq., in the office of the County Recorder of Calaveras County, California, but has never been recorded in the office of the [47] *the* County Recorder of any other county.

12: That various *perons*, having no actual knowledge of either of said conditional sales contracts, became creditors of the said bankrupt while the said bankrupt was in possession of said machinery and equipment.

That on April 30, 1938, the bankrupt was indebted to August P. Nelson in the amount of \$3234.50. That on May 25, 1938, \$2,000.00 was paid, leaving unpaid \$1234.52 as of May 25, 1938; that the balance due August P. Nelson May 31, 1939, was \$1932.69; that the balance on June 30, 1939, was \$2900.35; that on July 31, 1939, the balance due was \$3753.40; that on August 31, 1939, the balance due was \$4114.09, and that no payments were made by the bankrupt to August P. Nelson after May 25, 1939.

On May 23, 1938, the bankrupt owed the Limited Mutual Compensation Insurance Company \$410.56. That bankrupt is now indebted to said insurance company in excess of \$2,000.00.

That on April 30, 1938, there was owing to J. D. McCarty Estate on account of hauling \$5.48; on May 31, 1938, the balance was \$269.48; on June 30, 1938, the balance was \$549.48; on July 31, 1938, the balance was \$734.08; and in August 1938 the balance

was \$782.08. The bankrupt is still indebted to J. D. McCarty Estate.

March 5, 1937, the bankrupt became obligated to Dr. Homer J. Arnold, upon a written agreement of guarantee, in the sum of \$2700.00, no part of which has ever been paid.

On June 21, 1937, the bankrupt became obligated to Louise M. Beckmeyer upon a written obligation of guarantee in the sum of \$8,000.00, no part or portion of which has ever been paid.

That Dr. Arnold has never at any time known of the said conditional sales contracts of the respondents.

On or about June 24, 1937, the bankrupt became obligated to D. B. Robnett for professional services rendered in the sum of \$200.00; that D. B. Robnett never had any knowledge of the said conditional sales contracts of the respondents; that no part of [48] said obligation has been paid.

That on May 23, 1938, the bankrupt was indebted to the Calkins Company, and that on March 6, 1939, the bankrupt was indebted to said company in the amount of \$148.27. That no part of said \$148.27 has ever been paid; and, that said company has never had any knowledge of the said conditional sales contracts of respondents.

13: That said purported contracts of conditional sale and said purported conveyances are fraudulent and therefore void as against the trustee in bankruptcy herein.

14: That said Western-Knapp Engineering Co., a corporation, and Western Machinery Company, a corporation, have threatened to proceed with the foreclosure of said purported contracts of conditional sale and remove the said mining machinery and equipment from the place of its present location at the Mt. King Mine in Calaveras County. That the removal of said mining machinery and equipment would prevent the said trustee from making a satisfactory sale of the property and assets of the bankrupt. That the said mining machinery and equipment constitutes the main assets of the bankrupt and is a very valuable asset of the bankrupt. That great and irreparable injury and damage would be done to this estate if said Western-Knapp Engineering Co., and Western Machinery Company were permitted to remove the same from its present location or in any way interfere therewith.

15: That the allegations of paragraph XIV of said Trustee's petition are unproven except that it appears that within four months prior to March 15, 1939, the bankrupt paid to said Western-Knapp Engineering Co., and said Western Machinery Company \$10,000.00 for or on account of the purchase price of the mining machinery and equipment described as Parcels Two and Three herein.

16: That each of the allegations set forth and alleged in the said Answer of the respondents is either untrue or unproven except as herein found to be true. [49]



Now, upon application of James H. Mitchell, of the firm of Mitchell, Johnson & Ludwick, attorneys for said O. T. Gilbank, as trustee of the estate of Jumbo Consolidated Mining Co., a corporation, Bankrupt, it is

Ordered that the said Bill of Sale and the said Contract of Conditional Sale dated May 23, 1938, and recorded May 28, 1938, in Book "U" of Agreements, page 462, et seq., in the office of the County Recorder of Calaveras County, and the said Contract of Conditional Sale dated August 16th, 1938, and recorded August 20th, 1938, in Book 4 of Official Records at page 293, et seq., in the office of the County Recorder of Calaveras County, and the Contract of Conditional Sale dated July 26, 1938, and recorded August 2, 1938, in Book "U" of Agreements at page 485, et seq., in the office of the County Recorder of Calaveras County, are, and each of them is, fraudulent and void as to the lien or interest claimed by said respondents and each of them in and to the said mining machinery and equipment of the bankrupt, and that neither of the said respondents has any right, title or interest therein, nor to any part thereof, except as a general unsecured creditor herein. That said mining machinery and equipment is more particularly described as follows:

## Parcel One:

- 1—5x5 Marcy Ball Mill, #397, with V-belt drive and 60 HP motor, complete with sheave, slide rails and compensator.
- 3—Fagergren Flotation Machines, size 11-s, Type Std. Square, 720 RPM, Serial Nos. 21, 22 & 23.
- 2—Fagergren Flotation Machines, size 36x9, Type Std. Square, 600 RPM, one Serial No. 322, no number other machine.
- 1—Fagergren Flotation Machine, size 9-S Type Std. Square, 900 RPM, Serial No. S-51.
- 1—54" Duplex Dorr Classifier, with motor and V-belt drive, classifier Serial No. 1275D.
- 1—18x18 Pan American Jig, Type AC, No. 271.

[50]

- 1—Hoist Motor, Westinghouse Oil Well Motor, varying speed, 75 HP, 440 volts, 50/60 cycle, 3 phase, style 21C482, Frame 752, 90 Amps, 970-1160 RPM, full load, Serial #4501040.
- 1—Westinghouse Controller, Frame 50, Style S020 E171.

## Parcel Two:

Counties in  
which located  
5-23-38

- 1—22x13x16 Ingersoll-Rand, Imperial Type, 2 stage, Air Compressor, complete with 200 HP, General Electric, 440 volt, 3 phase, 60 cycle motor, furnished with sheave and 13 V-belts, complete with sliding base and compensator. Mariposa
- 1—100 H.P. Double Drum Ottumwa Iron Works Mine Hoist, complete with 100 H.P., 440 volt, 3 phase, 60 cycle, variable speed motor complete with resistance grids and drum controller. State of Utah
- 1—Taper Bar Grizzly. Non-existent
- 1—15x38 Wheeling Jaw Crusher with V-belt drive and 75 HP, 440 volt, 3 phase, 60 cycle motor, with sliding base and compensator. Sacramento



Counties in  
which located  
5-23, 38

1—16" Belt Conveyor with magnetic pulley and motor generator set.	Calaveras
1—4x5 Leahy Vibrating Screen.	Calaveras
1—2'4" Type TY Traylor Secondary Crusher, complete with 75 HP, 440 volt, 3 phase 60 cycle motor, with sliding base, V-belt drive and compensator	Non-existent
1—8x5 Bucket Elevator, 40' centers, with gear head, motor and drive	Calaveras
1—16" Adjustable Speed Belt Feeder, with 16" conveyor to present ball mill with motor and drive.	Non-existent
1—Adjustable Speed Belt Feeder for new ball mill with motor and drive.	Non-existent
1—6x8 Hendy Overflow Ball Mill, with motor and V-belt drive.	Calaveras
1—6'x23'4" Model BHM Wemco Classifier with variable speed drive and U. S. Motor	Tuolumne
1—26"x26", 2-cell, Bendelari Jig.	Calaveras
1—3" Wilfley type pump with 7½ HP motor and drive.	Non-existent
4—44" Fagergren Flotation Cells, motor driven, with reagent feeders.	Tuolumne
1—16'x8' Thickener Tank, complete with low head superstructure, motor, mechanism, overflow launder and sills; 2 inch diaphragm pump complete with motor and driver.	Non-existent

[51]

1—4', 3 disc New American Type Filter.	Arizona
1—Deister-Plato Concentrating Table, with motor and drive.	Non-existent

## Parcel Three:

- 1—Pantograph—Ratio  $15\frac{1}{2}$  to 1  
1508'4"—1" Standard Black Pipe
- 4—50' lengths,  $\frac{3}{4}$ " Air Hose, complete with couplings
- 4—50' lengths,  $\frac{3}{4}$ " Air Hose, complete with couplings
- 5—50' lengths, Water Hose, complete with couplings
- 1—400 Amp. Style 918-153, Type ABI, 3 pole, 600 volt, West-  
inghouse Circuit Breaker
- 1—600 Amp. Style 918-157, Type ABI, 3 pole, 600 volt, West-  
inghouse Circuit Breaker
- 1—2"MRV25, Ingersoll-Rand Cameron Motor Pump, with  
cross-the-line starter, magnetic push button, over and un-  
der voltage protection, suction and discharge flanges.
- 1—50 cu. ft. 28" gauge, Roller Bearings Ore Skip
- 1—type 6 HC, Ingersoll-Rand, double drum, Air Hoist
- 2—HNN-1-J, Ingersoll-Rand, double drum, Air Hoists, Se-  
rials Nos. 306 & 379-S @ 820.00
- 3—WEMCo Slip Scrapers, with bridles @ 150.00
- 1—No. 5, Ingersoll-Rand Drill Sharpener, complete with ac-  
cessories for 1" quarter octagon steel, Serial No. 1625,  
IRLP shank & bit punch and late type hammer cylinder
- 6—24 cu. ft., 18" gauge, roller bearing, Greene Side Dump  
Ore Cars @ 145.00
- 4—DA30 Ingersoll-Rand Air Drifters, Serial Nos. 456570,  
457918, 457884, & 457923 @ 390.00
- 1—SAR-120, Ingersoll-Rand Stoper with 1" quarter octagon  
chuck, Serial No. 442018
- 3— $3\frac{1}{2}$ "x7' Columns complete @ 60.00
- 2—Column Clamps @ 3.10
- 2—#1167 Chuck Wrenches @ 3.00
- 3— $3\frac{1}{2}$ " Column Arms @ 21.00
- 2— $3\frac{1}{2}$ " Saddles @ 21.00

and it is further

Ordered that said respondents are, and each of them is, hereby forever barred and resrtained from proceeding with the [52] foreclosure of, or asserting any right, title or interest in or to said mining machinery and equipment under, the said conditional sales contracts, or either of them, or from doing anything or taking any action, legal or otherwise, in connection with the removal of said mining machinery and equipment from the possession of the bankrupt, or the trustee, or from in any way interfering with the use, operation and sale of the said mining machinery and equipment by the trustee herein; and it is further

Ordered that the title in and to the said mining machinery and equipment is hereby quieted in the trustee in bankruptcy herein, and that said respondents are, and each of them is hereby permanently enjoined and restrained from asserting any claim of any kind or nature in or to the said mining machinery and equipment or any part thereof; and it is further

Ordered that the said trustee is hereby authorized to institute such a proceeding as may be proper in a court of competent jurisdiction with respect to the payments of money made by the bankrupt to said respondents within four months prior to March 15, 1939.

HUGH L. DICKSON

Referee

Approved as to Form

.....  
Attorney for the Western Knapp Engineering Co., a corporation; Western Machinery Company, a corporation.

[Endorsed]: Filed Jun. 6, 1941. Hugh L. Dickson, Referee. Filed Aug. 22, 1941. R. S. Zimmerman, Clerk. [53]

—————  
[Title of District Court and Cause.]

ORDER EXTENDING TIME OF RESPONDENTS TO FILE PETITION FOR REVIEW OF REFEREE'S ORDER GRANTING TRUSTEE'S PETITION TO RECOVER ASSETS FRAUDULENTLY OR PREFERENTIALLY TRANSFERRED BY BANKRUPT AND TO AVOID LIEN

Hon. Hugh L. Dickson, having heretofore and on the 9th day of April, 1941, signed and filed herein his Memorandum Opinion upon the issues raised by the Trustee's Petition to Recover Assets Fraudulently or Preferentially Transferred by Bankrupt and to Avoid Lien, and the Answer thereto filed herein by Respondents, Western Machinery Company, a corporation, and Western-Knapp Engineering Co., a corporation, in which the attorneys for the Trustee are directed to prepare an appropriate formal order; and good cause appearing therefor, Now, upon motion of Arthur P. Shapro, Esq., attorney for said Respondents;

It Is Hereby Ordered that the time within which said Respondents, or either of them, may file herein their petition or petitions for a review of the order granting said Trustee's Petition to Recover Assets Fraudulently or Preferentially Transferred by Bankrupt and to Avoid Lien, be and the same is hereby extended for a period of twenty days from and after the service, by mail, upon said attorney for said Respondents, at his office, 420 Russ Building, San Francisco, California, of a duly certified copy of the formal order to be hereafter signed [54] and filed by said Referee in Bankruptcy thereon.

Dated at Los Angeles, in said District, this 11th day of April, 1941.

HUGH L. DICKSON

Referee in Bankruptcy

[Endorsed]: Filed Apr. 11, 1941.

[Endorsed]: Filed Feb. 13, 1942. Hugh L. Dickson, Referee. Filed Feb. 13, 1942. R. S. Zimmerman, Clerk. [55]

[Title of District Court and Cause.]

PETITION FOR REVIEW OF REFEREE'S  
ORDER GRANTING PETITION TO RE-  
COVER ASSETS FRAUDULENTLY OR  
PREFERENTIALLY TRANSFERRED BY  
BANKRUPT AND TO AVOID LIEN

Comes now Western-Knapp Engineering Co., a corporation, and respectfully represents:

That heretofore, and on the 6th day of June, 1941, Hon. Hugh L. Dickson, Referee in Bankruptcy herein, made, and on said date signed and filed herein, that certain Order granting said Petition to Recover Assets Fraudulently or Preferentially [56] Transferred by Bankrupt and to Avoid Lien, a true copy of which is hereto annexed, marked Exhibit "A", and hereby expressly referred to and made part hereof, wherein and whereby the claim of title and interest of your Petitioner in and to certain personal property more particularly in said Order described as "Parcel One" and "Parcel Two", was found and determined by said Referee to be fraudulent and void as against O. T. Gilbank, the duly appointed, qualified and acting Trustee of the estate of the Bankrupt above-named.

That thereafter, and on the 3rd day of July, 1941, your Petitioner was duly served with the aforesaid Referee's Order, dated the said 6th day of June, 1941, in the manner and in accordance with that certain Order Extending Time of Re-

spondents to File Petition for Review of Referee's Order Granting Trustee's Petition to Recover Assets Fraudulently or Preferentially Transferred by Bankrupt and to Avoid Lien, theretofore made and entered herein by said Referee on the 11th day of April, 1941.

That the aforesaid Referee's Order, so signed and filed herein on the said 6th day of June, 1941, was so made by said Referee upon said Trustee's Petition to Recover Assets Fraudulently or Preferentially Transferred by Bankrupt and to Avoid Lien, after a hearing had upon said Petition by said Referee on the 19th day of February, 1941, and after the consideration of briefs theretofore submitted to said Referee by counsel for the respective parties.

A. That the aforesaid Referee's Order, dated the said 6th day of June, 1941, in so far as it refers to, applies to, and grants said Trustee's Petition with respect to each and all of the personal property described in and as "Parcel Two" of said Order, was and is erroneous and contrary to law, and, more [57] particularly,

(1) That said Referee's Order (to the foregoing extent) is not supported by, and is contrary to, the evidence adduced by said Trustee and by your Petitioner upon the hearing of said Trustee's Petition to Recover Assets Fraudulently or Preferentially Transferred by Bankrupt and to Avoid Lien.



(2) That the evidence adduced by said Trustee in support of his said Petition was and is insufficient to warrant the relief therein prayed for and/or thereafter granted to said Trustee by the aforesaid Referee's Order (to the foregoing extent), dated, as aforesaid, the 6th day of June, 1941.

(3) That the aforesaid evidence, so adduced by said Trustee and by your Petitioner upon the hearing of said Trustee's Petition, shows affirmatively and without contradiction that said Bankrupt was, at all of the times therein mentioned, a corporation duly organized and existing under and by virtue of the laws of the State of Nevada, and at all times since on or about the 1st day of September, 1937, was qualified to and did carry on business as such foreign corporation in the State of California, and that, by reason of the premises and of all of the evidence so adduced upon the issues so raised by your Petitioner's Answer to said Trustee's Petition to Recover Assets Fraudulently or Preferentially Transferred by Bankrupt and to Avoid Lien, said Bankrupt was, at the time of the execution of the Contract of Conditional Sale between said Bankrupt and your Petitioner, dated May 23, 1938, and recorded May 28, 1938, in Book "U" of Agreements, at page 462 et seq., in the office of the County Recorder of Calaveras County, California, and of the Supplemental Agreement on Conditional Sale, likewise between said Bankrupt and your Petitioner and of even date therewith, a foreign corporation and a non-resident of the State of

California, within [58] the meaning of Section 2980 of the Civil Code of California.

(4) That the evidence so adduced by the respective parties upon the aforesaid issues, likewise by reason of the premises, shows affirmatively that the aforesaid and above-described Contract of Conditional Sale and Supplemental Agreement thereon between said Bankrupt and your Petitioner, as aforesaid, were properly and timely and duly recorded in compliance with and in accordance with the terms and conditions of the aforesaid Section 2980 of the said Civil Code of California; and that, in all respects, said Contract of Conditional Sale, and all of the rights and privileges therein granted to your Petitioner, were and are valid, enforceable, and subsisting, both as against the Bankrupt above-named and as against the aforesaid Trustee of said Bankrupt's estate.

B. That the aforesaid Referee's Order, dated the 6th day of June, 1941, in so far as it provides, as follows:

"That the said Trustee is hereby authorized to institute such a proceeding as may be proper in a court of competent jurisdiction with respect to the payments of money made by the Bankrupt, to said Respondents within four months prior to March 15, 1939."

was and is erroneous and contrary to law, in that said provision of said Order is contrary to the evidence adduced by the respective parties upon the

hearing of said Trustee's Petition to Recover Assets Fraudulently or Preferentially Transferred by Bankrupt and to Avoid Lien, and is inconsistent with and contrary to Finding No. 15 set forth and contained in said Referee's Order, commencing on line 27 and ending on line 32 of page 10 thereof.

Wherefore, your Petitioner prays that the aforesaid Referee's Order granting said Trustee's Petition to Recover Assets Fraudulently or Preferentially Transferred by Bankrupt and to [59] Avoid Lien, dated and filed herein on the said 6th day of June, 1941, may be, by the Judge of the above-entitled Court, in so far as it relates and refers to each and all of the personal property more particularly described in and as "Parcel Two" of said Order, reviewed, pursuant to the provisions of Section 39c of the Acts of Congress Relating to Bankruptcy, and that such Order, to that extent, may be thereafter, by the said Judge of this Court, reversed, and that said Referee be, by said Judge of this Court, directed to enter, with respect to said personal property so described as "Parcel Two" of said Referee's Order, an Order denying said Trustee's Petition with respect thereto, and establishing the validity of your Petitioner's claims thereto, in accordance with the prayer of your Petitioner's Answer to said Trustee's Petition to Recover Assets Fraudulently or Preferentially Transferred by Bankrupt and to Avoid Lien, theretofore filed herein; and for an Order similarly reviewing and reversing the aforesaid Referee's

Order, dated and filed herein on the said 6th day of June, 1941, in so far as said Order provides, as follows:

“That the said Trustee is hereby authorized to institute such a proceeding as may be proper in a court of competent jurisdiction with respect to the payments of money made by the Bankrupt to said Respondents within four months prior to March 15, 1939.”

Or for such other, further and different order or relief as to this Honorable Court may seem just in the premises.

WESTERN-KNAPP ENGINEER-  
ING CO.

By H. N. HOW,

President.

ARTHUR P. SHAPRO,

Attorney for Petitioner on Review. [60]

United States of America,

Northern District of California—ss.

City and County of San Francisco—ss.

H. N. How, being duly sworn, deposes and says:

That he is an officer, to wit, President of Western-Knapp Engineering Co., a corporation, the Petitioner named in the foregoing Petition, and as such is duly authorized to and does make this verification on behalf of said corporation.

That he has read said Petition and knows the contents thereof, and that the same is true of his

own knowledge, except as to those matters therein alleged on information or belief, and as to such matters he believes it to be true.

H. N. HOW

Subscribed and sworn to before me this 21st day of July, 1941.

[Seal]

LOUIS WIENER,

Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed Jul. 22, 1941. Hugh L. Dickson, Referee. Filed Aug. 22, 1941. R. S. Zimmerman, Clerk. [61]

---

[Title of District Court and Cause.]

CERTIFICATE BY REFEREE  
TO JUDGE

I, Hugh L. Dickson, one of the Referees of said Court, do hereby certify that in the course of proceedings in said cause before me, upon the hearing of the Petition of Hubert F. Laugharn, as trustee of the estate of Jumbo Consolidated Mining Co., a corporation, bankrupt, verified the 17th day of October, 1940, and filed, (O. T. Gilbank, as trustee of the estate of said bankrupt upon stipulation of the parties herein being duly and regularly substituted in the place and stead of said Hubert F. Laugharn as such petitioner, said Hubert F. Laugharn, having duly and regularly resigned as trustee of said estate), and the Answer thereto of

Western-Knapp Engineering Co., a corporation, and Western Machinery Company, a corporation, verified the 12th day of December, 1940, and filed, the following questions were presented upon which a petition for review has been filed:

### Questions Presented in Petition and on Review

1. During the period mentioned in said petition, did the bankrupt reside in the County of Los Angeles, as the term is used in Civil Code Section 2980, so as to require the recording of the conditional sales contract of Western-Knapp Engineering Co., in the County of Los Angeles?

(Respondent, Western Machinery Company, by failing to file its petition for review admits the correctness of the order of the Referee with respect to its contract of conditional sale.)

(The Western-Knapp Engineering Company has not raised any question in its petition for review with respect to the correctness of the portion of the Referee's order concerning the property described in the Order as Parcel One (which is the same [62] property described as Exhibit 1 in the said petition and in Exhibit "B" attached to the contract of conditional sale of Western-Knapp Engineering Co.).)

(The only other property involved in this proceeding and in the petition of Western-Knapp Engineering Co. on review is the property described in the Order as Parcel Two (which is the same property described in Exhibit 2 in the said petition



and in Exhibit "A" attached to the contract of conditional sale of Western-Knapp Engineering Co.).)

2. Has the Referee in this proceeding the authority to authorize the trustee herein "to institute such a proceeding as may be proper in a court of competent jurisdiction with respect to the payment of money made by the bankrupt to said respondents within four months prior to March 15, 1939"?

#### History of Litigation as Disclosed from the File

On September 29, 1939, the Committee of Creditors of Jumbo Consolidated Mining Company, a corporation, a Debtor under Chapter XI proceedings, (Jumbo Consolidated Mining Co., a corporation, was on September 11, 1940, adjudicated a bankrupt and therefore said corporation is referred to herein as "the bankrupt"), filed a petition alleging, among other things, that the liens and interest claimed by Western-Knapp Engineering Co., and Western Machinery Company, the respondents herein, in and to certain mining machinery and equipment, under the conditional sales contracts, are void for various reasons therein stated, and asked for an order requiring said companies to show cause why they should not be restrained "from proceeding with the foreclosure of the rights of this estate in and to the machinery and equipment" described in said contracts.



An order to show cause was issued September 29, 1939, upon said petition.

On January 25, 1940, answers were filed separately by each of said two companies. [63]

On January 30, 1940, the case was partially heard before Referee Samuel W. McNabb, and was then continued so that the petitioner could present such further rebuttal evidence as may be proper, and thereafter continued upon stipulation and request of both parties.

On September 11, 1940, Jumbo Consolidated Mining Co., a corporation, Debtor, was adjudged a bankrupt herein. Hubert F. Laugharn was appointed trustee.

On November 28, 1940, pursuant to written stipulation, a new petition was filed by Hubert F. Laugharn, as trustee for the said bankrupt, to recover assets fraudulently or wrongfully transferred by the bankrupt and to avoid liens claimed by Western-Knapp Engineering Co., a corporation, and Western Machinery Company, a corporation, and an order to show cause upon the said trustee's petition was issued wherein said Western-Knapp Engineering Co., a corporation, and Western Machinery Company, a corporation were required to show cause why

(1) An order should not be made and entered herein restraining the said respondents and each of them from proceeding with the foreclosure of the purported contracts of conditional sale referred to in said petition with respect to the mining ma-

chinery and equipment described in said petition, and from doing anything or taking any action, legal or otherwise, in connection with the removal of the said mining machinery and equipment or any part thereof from the possession of the bankrupt or the trustee, or from in any way interfering with the use, operation and sale of said mining machinery and equipment by the trustee herein; and,

(2) An order should not be made ordering, declaring and finding that the said conditional sales contract of the said respondents, Western-Knapp Engineering Company, a corporation, and Western Machinery Company, a corporation, respectively, are and each of them is fraudulent and void as to the lien or interest claimed by said respondents in the said mining machinery and [64] equipment; and,

(3) An order should not be made ordering and finding that all payments of money made by the bankrupt to said respondents, Western-Knapp Engineering Co., a corporation, and Western Machinery Company, a corporation, within four months prior to March 15, 1939, constitute a preference as against the other creditors of the bankrupt and determining the amount thereof, and,

(4) An order should not be made granting such other and further relief as to the said court may seem proper.

Said stipulation also provided that all testimony introduced at the hearing of January 30, 1940,

upon the petition of the Committee of Creditors may be considered as evidence introduced upon the hearing of the said trustee's petition to the same extent and to the same manner as though originally introduced upon the hearing of the said trustee's petition.

On December 13, 1940, the answer of Western-Knapp Engineering Co., a corporation, and Western Machinery Company, a corporation, to the said trustee's petition was filed herein.

This matter was finally heard on February 19, 1941, at which time, by written stipulation duly filed, O. T. Gilbank, who had been duly appointed trustee for the bankrupt on January 7, 1941, was substituted in the place and stead of Hubert F. Laugharn, as the petitioner in said petition, and paragraph I of said petition was amended accordingly.

#### Summary of Evidence

The following is a summary of the evidence material to the issues presented on review as adduced at said hearing:

The bankrupt is a corporation duly organized and existing under and by virtue of the laws of the State of Nevada, and at all times since September 1, 1937, has been qualified to do business, and has done and carried on business, in the State of California.

Paragraph Second of the Articles of Incorporation (Petitioner's Exhibit 8) provides that the

principal office of the corporation in NEVADA is in the City of Reno,

“but that this corporation may maintain an office or offices in such other place or places, within or without the State of Nevada, as may from time to time be designated by the Board [65] of Directors or by the By-Laws of this corporation, and that this corporation may conduct all corporate business of every kind and nature, including the holding of meetings of directors and stockholders, outside the State of Nevada, the same as though conducted within the State of Nevada.”

Except for the organization meeting held at Reno April 13, 1936, the first meeting of the bankrupt was held April 25, 1936, at 1119 Banks-Huntley Building, Los Angeles, California, at which time the Board designated the Bank of America, with offices at 660 South Spring Street, Los Angeles, as the depository for the company. (Testimony of W. J. Shaw 2-19-41)

The next meeting was on October 21, 1936, at 1119 Banks-Huntley Building, pursuant to a waiver of notice stating that the meeting shall be held “at the office of said corporation in room 1119 Banks-Huntley Building, in the City of Los Angeles, County of Los Angeles, State of California . . .”. (Testimony of W. J. Shaw 2-19-41).

That the minutes show that on October 22, 1936, another director’s meeting was held “in the office

of the company, room 1119 Banks-Huntley Building, in the City of Los Angeles, County of Los Angeles, State of California . . .". (Testimony of W. J. Shaw 2-19-41)

That on November 5, 1936, a directors' meeting was held pursuant to a waiver of notice stating in part that the meeting was to be held "at the office of said corporation in room 1119 Banks-Huntley Building, in the City of Los Angeles, County of Los Angeles, State of California". (Testimony of W. J. Shaw 2-19-41).

That on June 4, 1937, a special meeting of the directors was held pursuant to waiver of notice stating in part that the meeting was to be held "at the office of said corporation, room 1119 Banks-Huntley Building, in the City of Los Angeles, County of Los Angeles, State of California". (Testimony of W. J. Shaw 2-19-41).

That thereafter the bankrupt moved its office to the Bay Cities Building at Santa Monica.

On September 1, 1937, the bankrupt qualified to do business in this State. The statement of the bankrupt as a foreign corporation required by the laws of this State, was filed in the office [66] of the Secretary of State of the State of California, on that date and states that "the location and address of the principal office of said corporation within the State of California is Bay Cities Building, 225 Santa Monica Boulevard, in the City of Santa Monica, County of Los Angeles, State of

California," and that the name of the person residing in the State upon whom process directed to said corporation may be served is W. J. Shaw, giving his address, as provided by Civil Code Section 405, to be in Los Angeles County. (See Petitioner's Exhibit 7).

That the said respondents, Western-Knapp Engineering Company, a corporation, and Western Machinery Company, a corporation, knew that the office of the bankrupt in this State was in the County of Los Angeles, as indicated by the correspondence back and forth. The two purchase orders of Western Machinery Company (Exhibit 2) dated July 14, 1938, specified 506 Bay Cities Building, Santa Monica, California, as the main office of the bankrupt.

The various documents, such as invoices and letters to W. J. Shaw, as president, in Exhibit 11 state the address of the bankrupt to be Bay Cities Bldg., Santa Monica, Calif.

The conditional sales contract of August 16, 1938, with Western Machinery Company (Exhibit 1) shows the address of the bankrupt to be Santa Monica, California.

All of the books and records of the corporation have always been kept in Los Angeles County, except those required by the laws of Nevada to be kept in Reno. (Testimony of W. J. Shaw, 2-19-41)

Testimony of H. K. Hill:

That on April 30, 1938, the bankrupt was indebted to August P. Nelson in the amount of



\$3234.50. That on May 25, 1938, \$2000.00 was paid, leaving unpaid \$1234.52 as of May 25, 1938; that the balance due August P. Nelson May 31, 1939, was \$1932.69; that the balance on June 30, 1939, was \$2900.35; that on July 31, 1939, the balance due was \$3753.40; that on August 31, 1939, the balance due was \$4114.09, and that no payments were made by the [67] bankrupt to August P. Nelson after May 25, 1939.

On May 23, 1938, the bankrupt owed the Limited Mutual compensation Insurance Company \$410.56. That bankrupt is now indebted to said insurance company in excess of \$2,000.00.

That on April 30, 1938, there was owing to J. D. McCarty Estate on account of hauling \$5.48; on May 31, 1938, the balance was \$269.48; on June 30, 1938, the balance was \$549.48; on July 31, 1938, the balance was \$734.08; and in August 1938 the balance was \$782.08. The bankrupt is still indebted to J. D. McCarty Estate.

#### Testimony of Dr. Homer J. Arnold:

March 5, 1937, the bankrupt became obligated to Dr. Homer J. Arnold, upon a written agreement of guarantee, in the sum of \$2700.00, no part of which has ever been paid.

On June 21, 1937, the bankrupt became obligated to Louise M. Beckmeyer upon a written obligation of guarantee in the sum of \$8,000.00, no part or portion of which has ever been paid.



That Dr. Arnold has never at any time known of the said conditional sales contracts of the respondents.

Testimony of D. B. Robnett:

On or about June 24, 1937, the bankrupt became obligated to D. B. Robnett for professional services rendered in the sum of \$200.00; that D. B. Robnett never had any knowledge of the said conditional sales contracts of the respondents; that no part of said obligation has been paid.

(Petitioner's Exhibit No. 9 is an itemized statement for professional services rendered by D. B. Robnett totalling \$200.00).

Testimony of Mr. Hussung:

Mr. Hussung testified that he is the Credit Manager for The Calkins Company; that on May 23, 1938, the bankrupt was indebted to The Calkins Company, and that on March 6, 1939, the bankrupt was indebted to his company in the amount of \$148.27. That no part of said \$148.27 has ever been paid; and, that neither he or his company has ever had any knowledge of the said condi- [68]  
tional sales contracts of respondents.

(Petitioner's Exhibit No. 10 is a statement of The Calkins Company showing the amount now unpaid).

Reference to the claims in the file will show numerous persons who became creditors of the bankrupt while the bankrupt was in possession of said machinery and equipment.

## FINDINGS

Upon considering all the evidence, including the foregoing, I made the following findings:

1. That on March 15, 1939, Jumbo Consolidated Mining Co., a corporation, as Debtor, filed its petition under Section 322, Chapter XI of the Bankruptcy Act; and that said Jumbo Consolidated Mining Co., a corporation, was duly and regularly adjudicated a bankrupt on the 11th day of September, 1940. That on the 16th day of September, 1940, Hubert F. Laugharn was duly and regularly appointed, qualified and acted as trustee of said estate. That thereafter said Hubert F. Laugharn duly and regularly resigned as trustee of said estate whereupon said petitioner, O. T. Gilbank, was duly and regularly appointed and qualified as trustee of said estate and is now acting as such trustee.

2. That the bankrupt is a corporation duly organized and existing under and by virtue of the laws of the State of Nevada, and, at all times since on or about September 1, 1937, said bankrupt has been qualified to do business, and has done and carried on business, in the State of California. That the Articles of Incorporation of said bankrupt provide, among other things, that it may conduct all corporate business of every kind and nature outside the State of Nevada. That, except for the organization meeting held at Reno, Nevada, April 13, 1936, the first meeting of the bankrupt was held April 25, 1936, at 1119 Banks-Huntley

Building, Los Angeles, California, at which time the Board designated the Bank of America, with offices at 660 South Spring Street, Los Angeles, as the depository for the company. [69]

The next meeting was on October 21, 1936, at 1119 Banks-Huntley Building, pursuant to a waiver of notice stating that the meeting shall be held "at the office of said corporation in Room 1119 Banks-Huntley Building, in the City of Los Angeles, County of Los Angeles, State of California . . .".

That the minutes show that on October 22, 1936, another directors' meeting was held "in the office of the company, Room 1119 Banks-Huntley Building, in the City of Los Angeles, County of Los Angeles, State of California . . .".

That on November 5, 1936, a director's meeting was held pursuant to a waiver of notice stating in part that the meeting was to be held "at the office of said corporation in Room 1119 Banks-Huntley Building, in the City of Los Angeles, County of Los Angeles, State of California".

That on June 4, 1937, a special meeting of the directors was held pursuant to waiver of notice stating in part that the meeting was to be held "at the office of said corporation, room 1119 Banks-Huntley Building, in the City of Los Angeles, County of Los Angeles, State of California".

Thereafter the bankrupt moved its office to the Bay Cities Building at Santa Monica, in the said County of Los Angeles.

On September 1, 1937, the bankrupt duly qualified to do business in this state; that the statement of the bankrupt as a foreign corporation, required by the laws of this State, was duly filed in the office of the Secretary of State of the State of California, on that date and states that "the location and address of the principal office of said corporation within the State of California is Bay Cities Building, 225 Santa Monica Boulevard, in the City of Santa Monica, County of Los Angeles, State of California", and that the name of the person residing in the State upon whom process directed to said corporation may be served is W. J. Shaw, giving his address, as provided by Civil Code Section 405, to be in Los Angeles County. [70]

That the said respondents, Western-Knapp Engineering Co., a corporation, and Western Machinery Company, a corporation, knew that the office of the bankrupt in this State was in the County of Los Angeles, as indicated by the correspondence back and forth. The two purchase orders of Western Machinery Company (Pet. Ex. 2) dated July 14, 1938, specified 506 Bay Cities Building, Santa Monica, California, as the main office of the bankrupt.

That the various documents, such as invoices and letters to W. J. Shaw, as president, in Exhibit 11, state the address of the bankrupt to be Bay Cities Bldg., Santa Monica, Calif.

That the conditional sales contract of August 16, 1938, with Western Machinery Company (Pet. Ex

1) shows the address of the bankrupt to be Santa Monica, California.

That all of the books and records of the corporation have always been kept in Los Angeles County, except those required by the laws of Nevada to be kept in Reno.

That at all times since September 1, 1937, the said bankrupt has been and is now a resident of the State of California residing, and having its place of business within the State of California, in the County of Los Angeles.

3. That Western-Knapp Engineering Co., a corporation, is a corporation duly organized and existing under and by virtue of the laws of the State of California.

4. That the Western Machinery Company is a corporation duly organized and existing under and by virtue of the laws of the State of Utah.

5. That sometime prior to May 23, 1938, Mr. Thyle, as the representative of Western-Knapp Engineering Co., visited the mine and made a list of all the personal property owned by the bankrupt which he could find at the mining properties of the bankrupt, which mining properties are hereinafter referred to as the Mt. King Mine. That on May 23, 1938, an instrument in writing (Res. Ex. "C") was delivered to said Western-Knapp Engineering Co., purporting to [71] be a bill of sale conveying to said Western-Knapp Engineering Co., all of the bankrupt's right, title and interest in and to the said mining machinery and equipment then located at

the Mt. King Mine and which was owned and in the possession of the bankrupt. That said property is also set forth and described in Exhibit "B" attached to and made a part of the purported contract of conditional sale dated May 23, 1938, (Pet. Ex. 6) wherein said Western Knapp Engineering Co., a corporation, is designated as the seller and the bankrupt is designated as the buyer, and is also set forth and described in Exhibit 1 attached to and made a part of said trustee's petition to which reference is hereby made for further particulars, and is also set forth herein as Parcel One. That the only purpose of the said purported bill of sale was an attempt on the part of Western-Knapp Engineering Co., to obtain title to all the personal property owned by the bankrupt on May 23, 1938, as additional security for the payment of the property described in Exhibit "A" of said contract of conditional sale. That all of said personal property (described herein as Parcel One) has been in the possession and under the control of the bankrupt at all times since September 1, 1937.

6. That the said Mt. King Mine is located in the County of Calaveras, State of California, and is now and has been at all times since on and prior to September 1st, 1937, a mining property, operated, developed and in the possession of the bankrupt.

7. That, at the time of the said delivery of said purported bill of sale, the bankrupt had the possession and control of all said mining machinery and equipment and that said mining machinery and



equipment (described herein as Parcel One) was not, on the said 23d day of May, 1938, nor at any other time or at all, delivered to said Western-Knapp Engineering Co., nor has said Western-Knapp Engineering Co., ever had possession thereof, and that at all times since on and prior to May 23, 1938, the said mining machinery and equipment has remained in the possession of the [72] bankrupt, during which time numerous persons have become and now are creditors of the bankrupt.

8. That on the said 23d day of May, 1938, the said instrument purporting to be a contract of conditional sale (Pet. Ex. 6) was executed by said Western-Knapp Engineering Co., as seller, and the bankrupt, as buyer, wherein Western-Knapp Engineering Co., purported to sell, and the bankrupt purported to buy, under the terms and conditions thereof the mining properties and equipment described as Parcel One herein and also the said mining machinery and equipment set forth and described in Exhibit "A" attached thereto and made a part thereof, and which is described herein as Parcel Two. That said mining machinery and equipment is also set forth and described in Exhibit 2 attached to and made a part of trustee's petition, to which reference is hereby made for further particulars.

9. That on the said 23d day of May, 1938, a portion of said mining machinery and equipment de-



scribed herein as Parcel Two was located in various counties of the State of California and certain other portions of said mining machinery and equipment were not in existence. That the description of said mining machinery and equipment described as Parcel Two herein, and the counties in which certain of said mining machinery and equipment was located, and the fact that other portions of said mining machinery and equipment were not in existence, on the said 23d day of May, 1938, is indicated opposite the respective items of mining machinery and equipment described in Parcel Two hereof. That said contract of conditional sale was recorded May 28, 1938, in Book "U" of Agreements, at page 462, et seq., in the office of the County Recorder of Calaveras County, California, but has never been recorded in the office of the County Recorder of any other county.

10. That at all times since on and after the 12th day of August, 1938, the bankrupt has had the possession and control of all that certain mining machinery and equipment more particularly [73] set forth and described in Exhibit 3 annexed to and made a part of said trustee's petition, to which reference is hereby made for further particulars, which mining machinery and equipment is also described herein as Parcel Three. That at no time during said period has said mining machinery and equipment, or any part thereof, been delivered to said Western-Machinery Company, nor has said

Western Machinery Company during any of said time had possession of said mining machinery and equipment, or any part thereof. That at all times since August 12, 1938, the said mining machinery and equipment has remained in the possession of the bankrupt, during which times numerous persons have become and now are creditors of the bankrupt. That all of the said mining machinery and equipment was ordered from the respondent Western Machinery Company, on open account and delivered to the bankrupt during the period commencing May 19, 1938, to and including August 12, 1938, and that title thereto passed to the bankrupt at the time of such delivery.

11. That on the 16th day of August, 1938, a purported contract of conditional sale was executed by said Western Machinery Company, as seller, and the bankrupt, as buyer, wherein and whereby the said Western Machinery Company purported to sell, and the bankrupt purported to buy, said mining machinery and equipment described herein as Parcel Three. That said conditional sales contract was introduced in evidence herein and marked petitioner's Exhibit 1. That said conditional sales contract was recorded August 20, 1938, in Book 4 of Official Records, at page 293, et seq., in the office of the County Recorder of Calaveras County, California, but has never been recorded in the office of the County Recorder of any other county.

12. That various persons, having no actual knowledge of either of said conditional sales con-

tracts, became creditors of the said bankrupt while the said bankrupt was in possession of said machinery and equipment.

That on April 30, 1938, the bankrupt was indebted to August [74] P. Nelson in the amount of \$3234.50. That on May 25, 1938, \$2,000.00 was paid, leaving unpaid \$1234.52 as of May 25, 1938; that the balance due August P. Nelson May 31, 1939, was \$1932.69; that the balance on June 30, 1939, was \$2900.35; that on July 31, 1939, the balance due was \$3753.40; that on August 31, 1939, the balance due was \$4114.09, and that no payments were made by the bankrupt to August P. Nelson after May 25, 1939.

On May 23, 1938, the bankrupt owed the Limited Mutual Compensation Insurance Company \$410.56. That bankrupt is now indebted to said insurance company in excess of \$2,000.00.

That on April 30, 1938, there was owing to J. D. McCarty Estate on account of hauling \$5.48; on May 31, 1938, the balance was \$269.48; on June 30, 1938, the balance was \$549.48; on July 31, 1938, the balance was \$734.08; and in August 1938 the balance was \$782.08. The bankrupt is still indebted to J. D. McCarty Estate.

March 5, 1937, the bankrupt became obligated to Dr. Homer J. Arnold, upon a written agreement of guarantee, in the sum of \$2700.00, no part of which has ever been paid.

On June 21, 1937, the bankrupt became obligated to Louise M. Beckmeyer upon a written obligation

of guarantee in the sum of \$8,000.00, no part or portion of which has ever been paid.

That Dr. Arnold has never at any time known of the said conditional sales contracts of the respondents.

On or about June 24, 1937, the bankrupt became obligated to D. B. Robnett for professional services rendered in the sum of \$200.00; that D. B. Robnett never had any knowledge of the said conditional sales contracts of the respondents; that no part of said obligation has been paid.

That on May 23, 1938, the bankrupt was indebted to the Calkins Company, and that on March 6, 1939, the bankrupt was indebted to said company in the amount of \$148.27. That no part of said \$148.27 has ever been paid; and, that said company has never had any knowledge of the said conditional sales contracts of respondents. [75]

13. That said purported contracts of conditional sale and said purported conveyances are fraudulent and therefore void as against the trustee in bankruptcy herein.

14. That said Western-Knapp Engineering Co., a corporation, and Western Machinery Company, a corporation, have threatened to proceed with the foreclosure of said purported contracts of conditional sale and remove the said mining machinery and equipment from the place of its present location at the Mt. King Mine in Calaveras County. That the removal of said mining machinery and equipment would prevent the said trustee from

making a satisfactory sale of the property and assets of the bankrupt. That the said mining machinery and equipment constitutes the main assets of the bankrupt and is a very valuable asset of the bankrupt. That great and irreparable injury and damage would be done to this estate if said Western-Knapp Engineering Co., and Western Machinery Company were permitted to remove the same from its present location or in any way interfere therewith.

15. That the allegations of paragraph XIV of said Trustee's petition are unproven except that it appears that within four months prior to March 15, 1939, the bankrupt paid to said Western-Knapp Engineering Co., and said Western Machinery Company \$10,000.00 for or on account of the purchase price of the mining machinery and equipment described as Parcels Two and Three herein.

16. That each of the allegations set forth and alleged in the said Answer of the respondents is either untrue or unproven except as herein found to be true.

### ORDER OF REFEREE

Thereupon, on the 6th day of June, 1941, I entered an order ordering

1. That the said Bill of Sale and the said Contract of Conditional Sale dated May 23, 1938, and recorded May 28, 1938, in Book "U" of Agreements, page 462, et seq., in the office of the County

Recorder of Calaveras County, and the said Contract of Con- [76] ditional Sale dated August 16, 1938, and recorded August 20, 1938, in Book 4 of Official Records at page 293, et seq., in the office of the County Recorder of Calaveras County, and the Contract of Conditional Sale dated July 26, 1938, and recorded August 2, 1938, in Book "U" of Agreements at page 485, et seq., in the office of the County Recorder of Calaveras County, are, and each of them is, fraudulent and void as to the lien or interest claimed by said respondents and each of them in and to the said mining machinery and equipment of the bankrupt, and that neither of the said respondents has any right, title or interest therein, nor to any part thereof, except as a general unsecured creditor herein. That said mining machinery and equipment is more particularly described as follows:



Parcel One:

- 1—5x5 Marey Ball Mill, #397, with V-belt drive and 60 HP motor, complete with sheave, slide rails and compensator.
- 3—Fagergren Flotation Machines, size 11-s, Type Std. Square, 720 RPM, Serial Nos. 21, 22 & 23.
- 2—Fagergren Flotation Machines, size 36x9, Type Std. Square, 600 RPM, one Serial No. 322, no number other machine.
- 1—Fagergren Flotation Machine, size 9-S Type Std. Square, 900 RPM, Serial No. S-51.
- 1—54" Duplex Dorr Classifier, with motor and V-belt drive, classifier Serial No. 1275D.
- 1—18x18 Pan American Jig, Type AC, No. 271.
- 1—Hoist Motor, Westinghouse Oil Well Motor, varying speed, 75 HP, 440 volts, 50/60 cycle, 3 phase, style 21C482, Frame 752, 90 Amps, 970-1160 RPM, full load, Serial #4501040.
- 1—Westinghouse Controller, Frame 50, Style S020 E171.

Parcel Two:

Counties in  
which located  
5-23-38

- 1—22x13x16 Ingersoll-Rand, Imperial Type, 2 stage, Air Compressor, complete with 200 HP, General Electric, 440 volt, 3 phase, 60 cycle motor, furnished with sheave and 13 V-belts, complete with sliding base and compensator. Mariposa
  - 1—100 H.P. Double Drum Ottumwa Iron Works Mine Hoist, complete with 100 H.P., 440 volt, 3 phase, 60 cycle, variable speed motor complete with resistance grids and drum controller. State of Utah
- [77]
- 1—Taper Bar Grizzly. Non-existent
  - 1—15x38 Wheeling Jaw Crusher with V-belt drive and 75 HP, 440 volt, 3 phase, 60 cycle motor, with sliding base and compensator. Sacramento



2. that said respondents are, and each of them is, hereby forever barred and restrained from proceeding with the foreclosure of, or asserting any right, title or interest in or to said mining machinery and equipment under, the said conditional sales contracts, or either of them, or from doing anything or taking any action, legal or otherwise, in connection with the removal of said mining machinery and equipment from the possession of the bankrupt, or the trustee, or from in any way interfering with the use, operation and sale of the said mining machinery and equipment by the trustee herein.

3. that the title in and to the said mining machinery and equipment is hereby quieted in the trustee in bankruptcy herein, and that said respondents are, and each of them is hereby, permanently enjoined and restrained from asserting any claim of any kind or nature in or to the said mining machinery and equipment or any part thereof;

4. that the said trustee is hereby authorized to institute [79] such a proceeding as may be proper in a court of competent jurisdiction with respect to the payments of money made by the bankrupt to said respondents within four months prior to March 15, 1939.

Notice of the entry of said Order was served on said respondents, Western-Knapp Engineering Co., and Western Machinery Company on the 3d day of July, 1941, as appeared by proof filed herein.

Thereafter, on the 22nd day of July, 1941, the said respondents, Western-Knapp Engineering Co., a corporation, and Western Machinery Company, a corporation, filed their petition for a review of the said Order by the Judge of the above entitled court.

Attached to this Certificate are the following documents:

1. Petition for Review;
2. The Petition of said O. T. Gilbank, as trustee of the estate of Jumbo Consolidated Mining Co., a corporation, bankrupt;
3. Stipulation amending said Petition of trustee dated February 19, 1940;
4. The Answer of said Respondents, Western-Knapp Engineering Co., a corporation, and Western Machinery Company, a corporation;
5. The said Order entered on the said Petition the 6th day of June, 1941;
7. Points and authorities considered by me in connection with the issues presented on review.

Dated: August 15th, 1941.

HUGH L. DICKSON,  
Referee.

[Endorsed]: Filed Aug. 22, 1941. R. S. Zimmerman, Clerk. [80]

United States District Court  
Southern District of California  
Central Division

No. 33788-J.

In the Matter of JUMBO CONSOLIDATED MIN-  
ING COMPANY, a corporation,  
Bankrupt.

ORDER IN RE REVIEW OF REFEREE'S  
ORDER, AND MEMORANDUM OF DECISION.

The petitioner on review concedes that unless the bankrupt-buyer was a non-resident of this state within the meaning of Section 2980 and related provisions of the Civil Code of California the conditional sales contracts relied on have been improperly and insufficiently recorded and consequently "offer no security as conditional sales contracts" to the sellers.

Our consideration of this review and of the briefs and arguments of counsel have convinced us that the findings of the referee are supported by the evidence and are in conformity to applicable law. Accordingly, the findings of fact and conclusions of law of the referee are adopted and constitute the findings of fact and conclusions of law of this court, and the order of the referee dated June 6, 1941 is confirmed, except as to that part of the said order authorizing the trustee to institute proceedings with respect to payments of money made by the bank-

rupt to petitioner on review within four months prior to March 15, 1939, and such part of the order is not confirmed and is vacated. Exceptions allowed.

We regard the question for decision as so clear under the record before us and under the laws of California which unquestionably control this matter that merely a brief statement in amplification of the foregoing order is sufficient.

The referee has summarized the evidence as to the residential locale of the corporation bankrupt at all times applicable to the inquiry before the court. It is unnecessary in this memorandum to restate the facts or to do more than state that [81] with the exception of the initial legal processes of organizing the corporate body in the State of Nevada, every substantial activity and function of the Jumbo Consolidated Mining Company has been carried on and performed within the State of California.

The question of residence is one of intent and the purpose of the bankrupt corporation relative to its commercial domicile while doing business in California has been definitely shown to have been at all times the County of Los Angeles.

It is also significant and highly informative as to the corporation's expressed residential intent that in Paragraph Second of the articles of incorporation after providing that the principal office of the corporation in Nevada is in the City of Reno, it is stated "but that this corporation may maintain an office or offices in such other place or places, within or without the State of Nevada, as may from time

to time be designated by the board of directors or by the by-laws of this corporation, and that this corporation may conduct all corporate business of every kind and nature, including the holding of meetings of directors and stockholders, outside of the State of Nevada, the same as though conducted within the State of Nevada." This declaration even in the fundamental instrument creative of the corporate existence of the bankrupt company, followed by the indisputable location of the office of the corporation at Los Angeles County and other factors shown by the evidence and found by the referee, indicate that although formed in Nevada, the bankrupt corporation was for all practical and commercial purposes a California corporation which had its principal place of business in California in Los Angeles County.

In the language of the Supreme Court of California in its decision in *Wait v. Kern River Mining etc. Co.*, 157 Cal. 16, the bankrupt mining company now before this court "is a foreign corporation only in the sense that it is created in another state and continues to enjoy corporate life by permission of that [82] state. In every other sense it is solely a California corporation. So far as it in fact does or can do business at all, it does it solely by permission of this state, and within its borders. Under such circumstances its residence \* \* \* anywhere else outside of California, is the merest fiction." See, also, late California Appellate Court decision in

Sharp v. Big Jim Mines, 39 C. A. (2d) 435, to the same effect.

It is true that neither of the two state court decisions pertain directly to the "recording statutes" of California, such as Sections 2980, 2959a or 2965 of the Civil Code of California. We think, however, that the unaided language of these code sections when considered, as they must be in this matter involving a "foreign corporation", with Section 405 of the same code, undoubtedly make secure the correctness of the referee's order under attack.

Dated December 29, 1941.

PAUL J. McCORMICK,

United States District Judge.

[Endorsed]: Filed Dec. 29, 1941. [83]

---

[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT COURT  
OF APPEALS UNDER RULE 73(b)

Notice Is Hereby Given that Western-Knapp Engineering Co., a corporation, hereby appeals to the Circuit Court of Appeals, for the Ninth Circuit, from that portion of that certain Order and Judgment made and entered in the above-entitled proceeding by Hon. Paul J. McCormick, Judge of the above-entitled Court, on the 29th day of December, 1941, wherein and whereby said Court adopted as



the Findings of Fact and Conclusions of Law of said Court, the [84] Findings of Fact and Conclusions of Law of the Hon. Hugh L. Dickson, Referee in Bankruptcy of said Court, as set forth in said Referee's Certificate upon the Petition for Review filed herein by this Appellant from that certain Order of said Referee made and entered by him in the above-entitled Court on the 6th day of June, 1941, and the undersigned further hereby appeals to the aforesaid Circuit Court of Appeals, for the Ninth Circuit, from that portion of said Order of the above-entitled Court made herein on the said 29th day of December, 1941, wherein and whereby and to the extent that the said Order of said Referee, dated the said 6th day of June, 1941, was, by said Judge of the above-entitled Court, confirmed.

Dated at San Francisco, in the Northern District of California, this 26th day of January, 1942.

WESTERN-KNAPP  
ENGINEERING CO., a  
corporation, Appellant,  
By ARTHUR P. SHAPRO,  
Its Attorney.

[Endorsed]: Filed Jan. 27, 1942. Copy mailed to Attys. for Trustee.

E. L. S. [85]

[Title of District Court and Cause.]

### BOND ON APPEAL

Whereas, Western-Knapp Engineering Co., a Corporation, the appellant in the above proceeding has appealed to the United States Circuit Court of Appeals for the Ninth Circuit, from a judgment made and entered on the 29th day of December, 1941, against said appellant in said proceeding in the Central Division of the United States District Court for the Southern District of California, in favor of O. T. Gilbank, as Trustee of the Estate of the bankrupt above-named.

Now, Therefore, in consideration of the premises and such appeal, American Employers' Insurance Company, incorporated under the laws of the Commonwealth of Massachusetts, and authorized to transact a surety business in the State of California, does hereby undertake and promise on the part of said appellant, that said appellant will pay all costs of said appeal which may be awarded against it if said judgment of said District Court is affirmed or if said appeal is dismissed, together with such costs as said Appellate Court may award if said judgment is modified, not exceeding the sum of Two Hundred Fifty and no/100 (\$250.00) Dollars, to which amount it acknowledges itself bound.

It is further stipulated as a part of the foregoing bond that in case of the breach of any condition thereof, the above named District Court may, upon notice of not less than ten (10) days to the surety

above named, proceed summarily in said action or suit to ascertain the amount which said surety is bound to pay on account of such breach, and render judgment therefor against said surety and award execution therefor.

Signed, sealed and dated this 26th day of January, 1942.

AMERICAN EMPLOYERS'  
INSURANCE COMPANY,  
(Seal) By JOHN A. VIOLICH,  
Attorney in Fact.

The premium for this bond is \$10.00 per annum.

Bond approved Jan. 27, '42.

PAUL J. McCORMICK,  
Judge. [86]

State of California,  
County of—  
City and County of  
San Francisco—ss.

On This 26th day of January, A. D., 1942, before me, George A. Marks, a Notary Public in and for said County and State, personally appeared John A. Violich known to me to be the person whose name is subscribed to the within Instrument, as the Attorney-in-fact of American Employers' Insurance Company, and acknowledged to me that he subscribed the name of American Employers' Insurance Company thereto as principal and his own name as Attorney-in-fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal)                      GEORGE A. MARKS,  
Notary Public in and for said County and State.

My Commission Expires September 23, 1942.

[Endorsed]: Filed Jan. 27, 1942, P.M. R. S. Zimmerman, Clerk, By M. M. Karcher, Deputy Clerk. [87]

---

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD  
ON APPEAL UNDER RULE 75(a).

To the above-entitled Court, and to R. S. Zimmerman, Esq., Clerk of said Court, and to O. T. Gilbank, as Trustee of the estate of the above-named Bankrupt, and to Messrs. Mitchell, Johnson & Ludwick, his attorneys:

Comes now Western-Knapp Engineering Co., a corporation, Appellant herein, and, in accordance with Rule 75(a) of the Federal Rules of Civil Procedure, designates the following as [88] the portions of the record, proceedings and evidence to be contained in the Record on Appeal, Notice of which said Appeal was heretofore filed herein on the 27th day of January, 1942, viz:

1. (Appellee's) Petition to Recover Assets Fraudulently or Preferentially Transferred by Bankrupt and to Avoid Lien, together with the

Stipulation annexed thereto, and dated November 13, 1940, between Hubert F. Laugharn, former Trustee herein, and Appellant.

2. Order to Show Cause thereon issued on November 28, 1940, by Hon. Hugh L. Dickson, Referee in Bankruptcy.

3. (Appellant's) Answer to Petition to Recover Assets Fraudulently or Preferentially Transferred by Bankrupt and to Avoid Lien.

4. Reporter's Transcript of hearing held on January 30, 1940, before Hon. Samuel W. McNabb, Referee in Bankruptcy.

5. Stipulation, dated February 19, 1940, amending the aforesaid Petition of Trustee.

6. "Memorandum Opinion", dated April 9, 1941, of Hon. Hugh L. Dickson, Referee in Bankruptcy, and Order of said Referee, dated April 11, 1941, extending time of Respondents to file Petition for Review of said Referee's Order.

7. Referee's Order dated June 6, 1941.

8. (Appellant's) Petition for Review of "Referee's Order Granting Petition to Recover Assets Fraudulently or Preferentially Transferred by Bankrupt and to Avoid Lien".

9. Referee's Certificate upon said Petition for Review of said Referee's Order dated June 6, 1941.

10. Minute "Order in Re Review of Referee's Order, and Memorandum of Decision", entered by District Judge, and dated

December 29, 1941, confirming, in part, and reversing, in part, Referee's Order of June 6, 1941.

11. (Appellant's) Notice of Appeal, dated January 26, 1942.

12. (Appellant's) Bond on Appeal.

13. This Designation of Contents of Record on Appeal.

Dated: January 28, 1942.

Respectfully submitted,

ARTHUR P. SHAPRO,

Attorney for Appellant,

Western-Knapp Engineering  
Co., a corporation. [89]

---

AFFIDAVIT OF SERVICE BY MAIL

(C. C. P. 1013A)

No. 33788-J

State of California,

City and County of San Francisco—ss.

Agnes Godde, being sworn, says that she is a citizen of the United States, over 18 years of age, a resident of said City and County, and not a party to the within action.

That affiant's (business) address is 420 Russ Bldg. San Francisco, Calif.

That affiant served a copy of the attached Designation of Contents of Record on Appeal Under



Rule (75(a) by placing said copy in an envelope addressed to Messrs. Mitchell, Johnson & Ludwick at their office address 333 Roosevelt Bldg., Los Angeles, Calif. which envelope was then sealed and postage fully prepaid thereon, and thereafter was on January 28, 1942, deposited in the United States mail at San Francisco, Calif.

That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed.

AGNES GODDE,

Subscribed and sworn to before me on this 28th day of January, 1942.

[Seal]

LOUIS WIENER,

Notary Public in and for said county and state.

[Endorsed]: Filed Jan. 29, 1942. [90]

---

[Title of District Court and Cause.]

SUPPLEMENTAL DESIGNATION OF CONTENTS OF RECORD ON APPEAL UNDER RULE 75(a)

To the above-entitled Court, and to R. S. Zimmerman, Esq., Clerk of said Court, and to O. T. Gilbank, as Trustee of the estate of the above-named Bankrupt, and to Messrs. Mitchell, Johnson & Ludwick, his attorneys:

Comes now Western-Knapp Engineering Co., a corporation, Appellant herein, and, in accordance

with Rule 75(a) of the Federal Rules of Civil Procedure, designates (in addition to the [91] items described in its Designation dated January 28, 1942, and heretofore filed herein on January 29, 1942), the following as the portions of the record, proceedings and evidence to be contained in the Record on Appeal, Notice of which said Appeal was heretofore filed herein on the 27th day of January, 1942, viz.:

14. Original Debtor's Petition under Chapter XI.

15. Order of Reference of said Petition under Chapter XI to Referee.

16. Order of Adjudication made by Referee on September 11, 1940.

17. This Supplemental Designation of Contents of Record on Appeal.

Dated: February 11, 1942.

Respectfully submitted,

ARTHUR P. SHAPRO,

Attorney for Appellant, Western-Knapp Engineering Co., a corporation. [92]

AFFIDAVIT OF SERVICE BY MAIL  
(C. C. P. 1013A)

No. 3378-J

State of California,  
City and County of San Francisco—ss.

Agnes Godde, being sworn, says that she is a citizen of the United States, over 18 years of age, a resident of said City and County, and not a party to the within action.

That affiant's (business) address is 420 Russ Bldg., San Francisco, Calif.

That affiant served a copy of the attached Supplemental Designation of Contents of Record on Appeal Under Rule 75(a) by placing said copy in an envelope addressed to Messrs. Mitchell, Johnson & Ludwick at their office address 333 Roosevelt Bldg., Los Angeles, Calif. which envelope was then sealed and postage fully prepaid thereon, and thereafter was on February 11, 1942, deposited in the United States mail at San Francisco, Calif. That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed.

AGNES GODDE

Subscribed and sworn to before me on this 11th day of February, 1942.

[Seal]

LOUIS WIENER,  
Notary Public in and for said county and state.

[Endorsed]: Filed Feb. 13, 1942. [93]

[Title of District Court and Cause.]

ORDER FOR TRANSMISSION OF DOCUMENTS AND FOR INCLUSION THEREOF AS PART OF THE RECORD ON APPEAL

It appearing to the Court from the records, papers and files herein that, under date of January 27, 1942, an appeal has been perfected herein by Western-Knapp Engineering Co., a corporation, from the "Order in Re Review of Referee's Order, and Memorandum of Decision" herein made by this Court on December 29, 1941, and that said Appellant has, by designation (under Rule 75(a)), requested the Clerk of this Court to include upon the Record on said Appeal certified copies of the following documents, the originals of which are on file with Hon. Hugh L. Dickson, Referee in Bankruptcy, and not with said Clerk of this Court, and good cause appearing therefor,

Now, upon motion of Arthur P. Shapro, Esq., Attorney for said Appellant,

It Is Hereby Ordered that said Hon. Hugh L. Dickson, Referee in Bankruptcy, forthwith transmit to the Clerk of the above-entitled Court the originals of each and all of the following documents on file with him in the above-entitled matter, viz.:

(a) Order to Show Cause, dated November 28, 1940, issued by said Referee upon the Petition of Hubert F. Laugharn, (former) Trustee herein, and to which Appellant and Western Machinery Company, a corporation, are Re-

spondents, and which [94] was returnable on the 16th day of December, 1940.

(c) Order of said Referee, dated April 11, 1941, extending time of Respondents to file Petition for Review of said Referee's Order.

It Is Further Ordered that certified copies of items above numbered (a) and (c), when so received by said Clerk from said Referee, shall be included in the Record on Appeal to be hereafter prepared by said Clerk and transmitted to the Circuit Court of Appeals, for the Ninth Circuit, pursuant to the provisions of Rule 75(b) of the Federal Rules of Civil Procedure.

Dated at Los Angeles, in said District, this 13th day of February, 1942.

PAUL J. McCORMICK

District Judge

[Endorsed]: Filed Feb. 13, 1942. [95]

---

[Title of District Court and Cause.]

#### CLERK'S CERTIFICATE

I. R. S. Zimmerman, Clerk of the District Court of the United States for the Southern District of California, do hereby *hereby* certify that the foregoing pages numbered from 1 to 95 inclusive contain full, true and correct copies of: Debtor's Petition; Resolution of Board of Directors; Approval of Petition and Order of Reference; Order of

Adjudication; Stipulation dated Nov. 13, 1940; Petition of Trustee for Recovery of Assets; Order to Show Cause; Answer to Petition of Trustee; Stipulation Amending Trustee's Petition dated Feb. 19, 1940; Order of Referee dated June 6, 1941; Order Extending Time to File Petition for Review; Petition for Review; Referee's Certificate on Review; Order and Decision of District Judge; Notice of Appeal; Bond on Appeal; Designation of Record on Appeal; Supplemental Designation of Record on Appeal, and Order for Inclusion of Certain Documents in the Record, which constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the fees of the clerk for comparing, correcting and certifying the foregoing record amount to \$30.95, which amount has been paid to me by Appellant.

Witness my hand and the seal of the said District Court this 28th day of February, A. D. 1942.

[Seal]

R. S. ZIMMERMAN,

Clerk,

By: EDMUND L. SMITH,

Deputy.

---

[Endorsed]: No. 10073. United States Circuit Court of Appeals for the Ninth Circuit. Western-Knapp Engineering Co., a corporation, Appellant, vs. O. T. Gilbank, Trustee of the Estate of Jumbo Consolidated Mining Company, a corporation,



Bankrupt, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed March 2, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

---

In the United States Circuit Court of Appeals  
for the Ninth Circuit

Case No. 10073

WESTERN-KNAPP ENGINEERING CO.,  
Appellant,  
vs.

O. T. GILBANK, Trustee, etc.,  
Appellee.

CONCISE STATEMENT OF POINTS TO BE  
RELIED UPON BY APPELLANT ON AP-  
PEAL, AND DESIGNATION OF PARTS  
OF THE RECORD NECESSARY FOR THE  
CONSIDERATION THEREOF UNDER  
RULE 19(6).

CONCISE STATEMENT OF POINTS TO BE  
RELIED UPON BY APPELLANT UNDER  
RULE 19(6)

Comes now Western-Knapp Engineering Co., a corporation, Appellant herein, and, in accordance

with Rule 19(6) of the above-entitled Court, specifies the following as a concise statement of the points on which said Appellant intends to rely on the appeal heretofore perfected (and filed in the above-entitled Court) from the Order made and entered by Hon. Paul J. McCormick, Judge of the United States District Court, for the Southern District of California, on the 29th day of December, 1941, and more particularly specified and described in the Notice of such Appeal (Certified Record p. 84), dated January 26, 1942, and filed with the Clerk of said District Court on the 27th day of January, 1942, viz.:

That that portion of that certain ORDER OF said DISTRICT JUDGE, ENTERED in said District Court ON THE 29TH DAY OF DECEMBER, 1941, (C. R. p. 81), wherein and whereby said District Court adopted as the Findings of Fact and Conclusions of Law of said Court, the Findings of Fact and Conclusions of Law (C. R. pp. 69-75) of the Hon. Hugh L. Dickson, Referee in Bankruptcy of said Court (as set forth in said Referee's Certificate upon the Petition for Review filed with said District Court by Appellant from that certain Order of said Referee made and entered by him on the 6th day of June, 1941), and WHEREIN AND WHEREBY, and to the extent that, by said Order, SAID DISTRICT JUDGE CONFIRMED THE said ORDER OF said REFEREE DATED the said 6TH DAY OF JUNE, 1941 (C. R. p. 76), all IN SO FAR AS SAID

REFEREE'S ORDER, and the subsequent Order of the District Judge confirming same (hereinafter referred to as the "Order herein appealed from") refers and APPLIES TO THE PERSONAL PROPERTY DESCRIBED in and AS "PARCEL TWO" OF SAID REFEREE'S ORDER, was and is erroneous and contrary to law, in that

(a) Said Order herein appealed from is not supported by, and is contrary to the evidence adduced by Appellant and by Appellee upon the hearing before said Referee of said Appellee's "Petition to Recover Assets Fraudulently or Preferentially Transferred by Bankrupt and to Avoid Lien" (C. R. page 16);

(b) That the evidence adduced by Appellee in support of his said Petition was and is insufficient to warrant the relief therein prayed for and/or thereafter granted to Appellee by the aforesaid Referee's Order and by the Order herein appealed from (with respect to the said personal property described as "Exhibit 2");

(c) That the aforesaid evidence so adduced by Appellant and Appellee upon the hearing by said Referee of said Appellee's Petition shows affirmatively, and without contradiction, that the Bankrupt, Jumbo Consolidated Mining Company, a corporation, was at all of the times therein mentioned a corporation duly organized and existing under and by virtue of the laws of the State of Nevada, and at all times since on or about the 1st day of September, 1937, was qualified to and did carry

on business, as such foreign corporation, in the State of California, and that by reason of the premises and all of the evidence so adduced upon the issues so raised by Appellant's answer to Appellee's "Petition to Recover Assets Fraudulently or Preferentially Transferred by Bankrupt and to Avoid Lien", SAID BANKRUPT WAS, AT THE TIME OF THE EXECUTION OF THE CONTRACT OF CONDITIONAL SALE BETWEEN SAID BANKRUPT AND APPELLANT, DATED MAY 23, 1938, and of the Supplemental Agreement on Conditional Sale, likewise between said parties, and of even date therewith, A FOREIGN CORPORATION AND A NON-RESIDENT OF THE STATE OF CALIFORNIA, WITHIN THE MEANING OF SECTION 2980 OF THE CIVIL CODE OF CALIFORNIA;

(d) That the evidence so adduced by the respective parties upon the aforesaid issues, likewise by reason of the premises, shows affirmatively that the aforesaid and above described Contract of Conditional Sale and Supplemental Agreement thereon, between said Bankrupt and Appellant, were properly and timely and duly recorded in compliance and in accordance with the provisions of the aforesaid Section 2980 of the Civil Code of California; and that, in all respects, said Contract of Conditional Sale and all of the rights and privileges therein granted to Appellant were and are valid, enforceable and subsisting, both as against said

Bankrupt, and as against Appellee herein (the Trustee of said Bankrupt's estate);

(e) That at none of the times hereinabove or in said Appellee's "Petition to Recover Assets Fraudulently or Preferentially Transferred by Bankrupt and to Avoid Lien" mentioned, was said Bankrupt (the conditional vendee of the personal property described as "Exhibit 2" thereof) a "resident" of the County of Los Angeles, State of California, as that term is used in said Section 2980 of said Civil Code, so as to require the recordation of said Contract of Conditional Sale between said Bankrupt and Appellant in the said County of Los Angeles.

Dated at San Francisco, California, this 3rd day of March, 1942.

Respectfully submitted,

ARTHUR S. SHAPRO

Attorney for Appellant

DESIGNATION OF PARTS OF RECORD  
NECESSARY FOR THE CONSIDERATION  
OF APPEAL UNDER RULE 19(6)

Comes now Western-Knapp Engineering Co., a corporation, Appellant herein, and hereby designates, as the parts of the Record which it thinks necessary for the consideration of such Appeal, the entire Record as contained in the transcript of such Record on Appeal heretofore transmitted to the Clerk of the above-entitled Court by the Clerk of the United States District Court, for the Southern District of California.

Dated March 3, 1942.

ARTHUR S. SHAPRO

Attorney for Appellant

[Endorsed]: Filed March 2, 1942. Paul P. O'Brien, Clerk.



